

Dennis K. Bayer

Attorney

Dennis K. Bayer, Esq.
dennis@bayerlegal.com

109 South 6th Street, Suite 200
Flagler Beach, FL 32136
Tel: 386-439-2332
Fax: 386-439-6522

September 24, 2020

By Hand Delivery

City Clerk
City of Palm Coast
160 Lake Avenue
Palm Coast, FL., 32164

Re: Appeal of Bid Protest, RFP-FS-20-58

Dear Ms. Smith:

This correspondence serves as formal notice of the secondary level appeal from the denial of the bid protest filed by my client, PRIA, regarding RFP-FS-20-58. A copy of the denial of the appeal by the City Manager is attached hereto along with the prior denial by the Financial Director.

We will address Mr. Morton's denial as to each of the enumerated items set out in his letter.

1. Your appeal did not comply with the requirements of Sec. 2-29 (b)1) Bid protest procedures wherein it states "each written appeal must be accompanied by a bid protest appeal bond in the form of a *certified check, cashier's check or money order made payable to the City of Palm Coast*".

RESPONSE: The requirements of Sec. 2-29(b)(1) are both internally inconsistent as it allows a bond but then states that a check or money order is required and the requirements are also inconsistent with standard industry practices which require that appeal bonds be in the form of a surety bond, not a check or money order. My client included the preferred form of bond along with their appeal of the Financial Services Director's denial. A copy of that proof of bond is attached.

It would appear that the City is seeking to chill or prevent challenges of bid denials by allowing for an automatic forfeiture of appeal bonds without any due process being afforded to the appealing party. The process here only confirms this concern- both the Finance Director and the City Manager summarily stated that my client's appeal was without merit without providing any detail or substantive comments.

2. Your clients successfully accessed the Zoom meeting and registered their objections and received a response via digital media communications technology. Their failure to do so in a timely manner appropriate with the scheduled Agenda Item belies a

failure on their part. Clearly the technology was functioning, and they were afforded the appropriate opportunity.

RESPONSE: When my client tried to defend their bid at the September 1, hearing, they were unable to access the Zoom hearing. That is clearly obvious on the video of that meeting at mark 7:51 when Mayer Holland can clearly be heard discussing the difficulty with someone off camera. Curiously my clients were able to access the meeting and provide comments at the public comment section of the meeting AFTER the decision had been made. If we are not determined to be the successful bidder, then we will challenge the lack of due process afforded by the City to my client.

3. No conflict exists from Mr. Garganese, who merely acted as instructed by the City Council.

RESPONSE: The conflict of interest that the city attorney and his law firm had in analyzing my client's bid proposal is not negated because they were "merely acting as instructed by the City Council." Mr. Garganese clearly mis-stated the contents of the bid proposal, which had the required elements to the bid proposal for the types of coverage, the amounts of coverage and the deductibles. Mr. Garganese then proceeded to allow the bid to be awarded to his client, the Florida League of Cities, which utilizes his law firm to handle litigation and claims. This is a clear and unequivocal conflict of interest which should obligate the City to obtain independent legal counsel for review of this appeal.

In conclusion, there is simply no factual or legal basis for the Finance Director or the City Manager to state that the protest was without merit. Both denials ignore the initial recommendation of approval by the City's Risk Manager and the content of the bid protest package. In summary, the PRIA bid proposal was superior to the Florida League of City's and it had overwhelming support from the city's staff and, in particular, the Risk Management Department.

Since the coverage is scheduled to commence October 1, 2020, it is respectfully requested that this appeal be expedited before that date.

Very truly yours,



Dennis K. Bayer

DKB:rm

Enclosures:

Notice of Intent to Award dated June 30, 2020

PRIA Bid Protest Letter dated September 4, 2020

Denial Letter from Financial Services Director dated September 10, 2020

Appeal Letter o/b/o PRIA dated September 15, 2020

Proof of Bond

Appeal Denial Letter from City Manager dated September 21, 2020



city of PALM COAST

Finance Department
Budget & Procurement Office

160 Lake Avenue
Palm Coast, FL 32164
386-986-3730

NOTICE OF INTENT TO AWARD

Project: PROPERTY, GENERAL LIABILITY AND WORKERS
COMPENSATION INSURANCE PROGRAM - RFP-FS-20-58

Date: 6/30/2020

Appeal Deadline: Appeals must be Filed by 5:00 PM on 7/6/2020

Firm	Points
Public Risk Insurance Advisors Daytona Beach, FL	93.33
Florida League of Cities Orlando, FL	78.00

The intent of the City of Palm Coast is to award PROPERTY, GENERAL LIABILITY AND WORKERS COMPENSATION INSURANCE PROGRAM to **Public Risk Insurance Advisors**

Cc: Contract Coordinator, Project Manager, BPO Manager, Financial Services Director, Department Director

For questions regarding the NOIT please contact Procurement Coordinator jkscott@palmcoastgov.com.

Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Budget and Procurement Office Bid Protest procedures.

A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Financial Services Director, Helena Alves (HAlves@palmcoastgov.com) shall constitute a waiver of the protest proceedings.



Pursuant to City Code of Ordinances 2017-8 Chapter 2, Article 1, Division 3, Section 2-29 Bid Protest Procedures, our firm is filing this notice of protest within three (3) business days of the City's awarding of RFP#: RFP-FS-20-58 Request for Proposal: Property, General Liability and Workers Compensation Insurance Program at the September 1st 2020 City Council Meeting.

Grounds for Protest:

On September 1st 2020, City Attorney Anthony A. Garganese recommended to City Council that Staff's overwhelming recommendation of Intent to Award, filed on June 30th 2020, be overturned in lieu of statements made in an internal memorandum drafted by Attorney Garganese. Our firm's protest is based on the content of the memorandum which clearly stated inaccurate facts and false interpretations regarding our firm's proposal, and was ultimately used to convince the City Council to overturn the Staff's decision of the RFP Award to Public Risk Insurance Advisors to secure coverage through the Preferred Governmental Insurance Trust.

The coverage discrepancy within the memorandum that Attorney Garganese stressed as being a determining factor for the decision to overturn Staff's recommendation contains multiple substantive inaccuracies outlined below:

Per the memorandum, comments 1. Public Officials (E&I) Liability and 2. Employment Practices Liability

- The interpretations of our proposal are inaccurate, as Attorney Garganese states that our proposal was on a Claims Made basis for the above mentioned coverages. Per page 98 of our response to the RFP, it is evident that our terms are on an Occurrence Form, matching the expiring and renewal quote from FMIT. In making this inaccurate claim, Attorney Garganese refers to page 100 of our proposal, but fails to acknowledge that this page is an illustrative example of a Claims Made policy, intended to provide the City with information and clarification in the event the City desired to change the terms of the coverage. Our coverage, which is clearly stated as Occurrence is found on page 98 of our proposal.

Further discrepancies within the memorandum are as follows:

Per the memorandum, comment 3. EEOC Claims

- The \$100,000 limit for defense referenced for Preferred is **only** in relation to non-monetary claims. Monetary claims coverage is provided up to the full limit of the policy, with claims expenses provided outside of the policy limit. FMIT's endorsement on Legal Fee Reimbursement Administrative Proceedings form FMIT ECLE1016 states that the Trust will reimburse the member fifty percent of the Legal Fees, up to a maximum of \$25,000 per "covered action" for legal representation that for claims that allege wrongdoing of the Public Officer subject to certain conditions. "Covered action" is defined as an administrative proceeding before the Florida Public Employees Relation Commission, the State of Florida Commission on Human Relations, the Federal Equal Employment Opportunity Commission (EEOC), any Ethics Proceeding before the State of Florida Commission on Ethics or an ethics proceeding before any local ethics commission created by charter or ordinance which has jurisdiction over the alleged misconduct. Covered Action shall include related appeals arising from any of the underlying administrative proceedings described herein.

Per the memorandum, comment 4. Sewer Backup Claims

- FMIT is providing **at fault** coverage which is capped at 10,000 per claim and \$200,000 for the policy year. Preferred provides both at fault and no fault coverage which is capped at the \$200,000 aggregate for the year. No fault claims are also subject to \$10,000 per claimant and the annual aggregate. FMIT is excluding defense for any related suit and the cost of anything other than water extraction/cleanup. The form that we proposed provides defense within the limit.

- FMIT SBU 1019 states the following regarding coverage.

I. COVERAGE

The Trust will reimburse the costs of initial water extraction, drying and/or cleanup if sewage and/or wastewater backup occurs ("Backup Occurrence") within a residential or commercial property owned by a third-party ("Affected Property"), subject to the following coverage conditions:

1. *The Trust determines the relevant sewer line is owned, operated and/or maintained by the Designated Member and the Backup Occurrence arose from a sewer line obstruction or other malfunction outside of the Affected Property's lateral sewer line and boundary lines;*
2. *The property affected by the sewerline Backup Occurrence is not owned by the Designated Member;*
3. *Payment hereunder is limited to reimbursement of the Designated Member; however, the Trust may directly pay the selected cleanup services provider if the provider has not yet been paid for services covered by this endorsement.*
4. *The coverage provided hereunder is limited to payment for the reasonably incurred costs of initial water extraction, drying and/or cleanup following a Backup Occurrence;*
5. *The coverage provided hereunder is not subject to any deductible or self-insured retention.*

II. LIMIT

This coverage is limited to \$10,000.00 per Affected Property, subject to a maximum of \$200,000.00 in the aggregate per Trust coverage year.

III. EXCLUSIONS

The Exclusions Section of the Coverage Agreement shall continue to apply to this coverage in addition to the following endorsement-specific exclusions:

1. *Any Claim, Suit or liability for costs, expenses, losses, Damages, Bodily Injury or physical Property Damage or loss of use alleged to arise from the Backup Occurrence other than the reasonably incurred costs of initial water extraction, drying and/or cleanup following a Backup Occurrence;*

Per the memorandum, comment 5. Windstorm

- Attorney Garganese alleges our claim regarding windstorm coverage is misleading. Our proposal provides full wind coverage for all scheduled locations. Attorney Garganese mentions that FMIT would cover two (2) locations for wind coverage that are currently excluded on the policy, for an additional premium. Attorney Garganese fails to mention coverage for the remaining ten (10) locations that currently do not have wind coverage, and were not offered coverage through the FMIT proposal that was submitted. This leaves a gap of \$2,704,786 in City owned property that is uninsured for windstorm. The PGIT proposal provided by our firm includes windstorm coverage for all of these locations.

Per the memorandum, comment 6. COVID-19

- Attorney Garganese refers back to 'Paragraphs 3 & 4' of the memorandum, which contains the false statements regarding our proposed coverage form being Claims Made. Since the coverage is in fact written on an Occurrence Form, the substantial coverage differences that he mentions do not exist. There is no COVID exclusion on our proposed program from PGIT for POL/EPLI Claims.

Our grounds for protest are further exacerbated by the fact that the City Attorney, who laid out the case for reversing Staff's decision to the City Council, is an interested party in the outcome of this procurement. As a member of the firm Garganese, Weiss D'Agresta & Salzman, P.A., and in the firm's capacity as Panel Counsel for FMIT, the attorney and the firm litigate insurance claims for FMIT, including claims for the City of Palm Coast.

Kind regards,

City of Palm Coast
Bid #: RFP-FS-20-58
Protest



A handwritten signature in blue ink, appearing to read 'MM', is positioned above the printed name.

Matthew Montgomery
Executive Vice President



City of PALM COAST

Finance Department

160 Lake Avenue
Palm Coast, FL 32164
386-986-3700

September 10, 2020

Kyle Stoekel
Public Risk Advisor

Re: Response to Protest RFP-FS-20-58

Dear Mr. Stoekel,

I am writing in response to the above referenced protest. The protest email correspondence dated September 4th, 2020 is attached as reference.

The Bid documents expressly read, "The types of coverage, amounts of coverage, and deductibles must be materially similar to the City's current plan..." The City Attorney, pursuant to Council direction at a public meeting, reviewed the bid responses and outlined items that were significantly different. I have reviewed your protest correspondence, the bid documents and the City's RFP. Thereupon, I find your protest to be without merit.

If you wish to appeal my decision, you may file a written appeal to the City Manager within three (3) business days, or by 5 P.M. September 15, 2020. The written appeal must be accompanied by a bid protest appeal bond in the form of a certified check, cashier's check or money order made payable to the City of Palm Coast, in the amount of \$54,285. Please note that if the bid protest is determined to be without merit, the bid protest appeal bond is forfeited. The complete bid protest procedures can be found in Chapter 2, Article 1, Division 3, Section 2-29 of the City of Palm Coast Code of Ordinances.

I encourage your firm to continue to monitor and respond to bid opportunities in the future.

Sincerely,

A handwritten signature in black ink that reads "Helena Alves".

Helena Alves
Financial Services Director

cc: Budget and Procurement Staff; William Reischmann, City Attorney



Dennis K. Bayer

Attorney

Dennis K. Bayer, Esq.
dennis@bayerlegal.com

109 South 6th Street, Suite 200
Flagler Beach, FL 32136
Tel: 386-439-2332
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September 15, 2020

Matthew Morton
City Manager
City of Palm Coast
160 Lake Avenue
Palm Coast, FL., 32164

By Hand Delivery

Re: Appeal of Bid Protest, RFP-FS-20-58

Dear Mr. Morton:

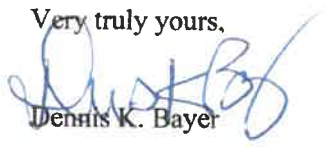
This correspondence serves as formal notice of appeal from the denial of the bid protest filed by my client, PRIA. A copy of the denial sent to my client by the Financial Services Director is attached hereto. Also enclosed is the proof of the posted bond.

The denial states that the protest is without merit, however it completely ignores the notice of intent to award (attached) where PRIA out-scored the Florida League of Cities and also the content of the bid protest. The denial also entirely ignores the conflict of interest that the city attorney and his law firm had in analyzing and over-riding our bid proposal that had overwhelming support from the city's staff and, in particular, the Risk Management Department.

PRIA's bid protest is attached. It spells out how Mr. Garganese mis-states the contents of our bid proposal, which clearly had the required similarity to the City's request for bids for the types of coverage, the amounts of coverage and the deductibles. Despite the prior overwhelming approval from staff that did not have a conflict of interest, the City then proceeded to allow the bid to be awarded to the Florida League of Cities insurance, which utilizes the Garganese law firm to handle coverage litigation and claims. This is a clear and unequivocal conflict of interest which should obligate the City to obtain independent legal counsel for review of this appeal. Under these circumstances, there is simply no factual or legal basis for the Finance Director's self serving statement that the protest was without merit.

When my client tried to defend their bid at the September 1, hearing, they were unable to access the Zoom hearing. If we are not determined to be the successful bidder, then we will challenge the lack of due process afforded by the City to my client along with the conflict of interest issue. My client and I would welcome an opportunity to discuss this matter with you in person. Please contact my office to schedule a conference.

Very truly yours,

A handwritten signature in blue ink, appearing to read "DKB", with a large, sweeping flourish extending to the right.

Dennis K. Bayer

DKB/kh

STATE OF FLORIDA ADMINISTRATION COMMISSION PROCUREMENT PROTEST BOND

Bond Number: 107274251
Contract Number: RFP-FS-20-58
Bond Effective Date: September 14, 2020

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Public Risk Insurance Agency (PRIA) a (mark one) corporation, partnership, proprietorship, organized and existing under the laws of the State of Florida, and having its principal place of business at 220 S. Ridgewood Ave Daytona Beach, FL 32114, as PRINCIPAL; and Travelers Casualty and Surety Company of America, a surety company, organized under the laws of the State of Connecticut, and duly authorized to do business in the State of Florida, whose principal place of business is One Tower Square, Hartford, CT 06183, as SURETY, are held and firmly bound unto the City of Palm Coast, as OBLIGEE, in the amount of \$54,285.00 for the payment of which sum we, as Principal and Surety, bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THIS BOND is issued under the provisions of sections 120.57 and 287.042 Florida Statutes. The above-named Principal has initiated an administrative protest regarding the Obligee's decision or intended decision pertaining to (mark one) Bid Number RFP-FS-20-58 an agency's request for approval of an exceptional purchase of Property, General Liability and Workers Compensation Insurance Program submitted by Public Risk Insurance Agency (PRIA) Said protest is conditioned upon the posting of a bond at the time of filing the formal written protest.


NOW, THEREFORE, the condition of this Bond is that if the Principal, after the administrative hearing process and/or any appellate court proceedings regarding the protest, shall satisfy all costs and charges allowed by final order and/or judgment, and interest thereon, in the event the Obligee prevails, then the obligation shall be null and void; otherwise it shall remain in full force and effect.

The Obligee may bring an action in a court of competent jurisdiction on this bond for the amount of such liability, including all costs and attorneys' fees.

PRINCIPAL: Public Risk Insurance Agency (PRIA)

BY: _____
Title: _____ (CORPORATE SEAL)
ATTEST: _____

SURETY: Travelers Casualty and Surety Company of America

BY:  _____
Title: Tyler D. DeBord: Attorney-in-Fact (CORPORATE SEAL)
Florida Resident Agent: Tyler D. DeBord – W025075

(Note: Power of Attorney showing authority of Surety's agent or Attorney in Fact must be attached).



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Tyler D. DeBord of Daytona Beach, Florida**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this 3rd day of February, 2017.



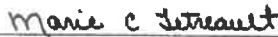
State of Connecticut
City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the 3rd day of February, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2021




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 14th day of September, 2020




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**



city of PALM COAST

Office of the City Manager

160 Lake Avenue
Palm Coast, FL 32164
386-986-3710

September 21, 2020

Dennis Bayer
109 S. 6th Street, Suite 200
Flagler Beach, Florida 32136

RE: Appeal of Bid Protest RFP-FS-20-58 dated September 15, 2020

Mr. Bayer:

I am in receipt of your Appeal of Bid Protest RFP-FS-20-58 dated September 15, 2020.

1. Your appeal did not comply with the requirements of Sec. 2-29 (b)1) Bid protest procedures wherein it states "each written appeal must be accompanied by a bid protest appeal bond in the form of a *certified check, cashier's check or money order made payable to the City of Palm Coast*".
2. Your clients successfully accessed the zoom meeting and registered their objections and received a response via digital media communications technology. Their failure to do so in a timely manner appropriate with the scheduled Agenda Item belies a failure on their part. Clearly the technology was functioning and they were afforded the appropriate opportunity.
3. No conflict exists from Mr. Garganese, who merely acted as instructed by the City Council.

I have completed an independent review and conclude substantial differences exist. I find your appeal without merit. If you wish to appeal my decision you must file a written appeal to City Council, addressed to the City Clerk, explaining in detail the nature of the appeal, and the grounds on which it is based. This notice must be received by the City Clerk no later than three business days after the date of the City Manager's written response, which is 5PM, Thursday September 24, 2020.

Yours,

Matthew Morton
City Manager



please recycle

palmcoastgov.com