

CITY OF MIAMI BEACH
Office of the City Manager
Letter to Commission No. 274-2004



To: Mayor David Dermer and
Members of the City Commission

Date: October 20, 2004

From: Jorge M. Gonzalez *JMG FOR*
City Manager

Subject: **FINDINGS OF THE STATE ATTORNEY AND THE MIAMI-DADE
COUNTY COMMISSION ON ETHICS AND PUBLIC TRUST
REGARDING SPONSORSHIP RFP BID PROTEST ALLEGATIONS**

Attached please find the final report of the State Attorney and the Miami-Dade County Commission on Ethics and Public Trust regarding an inquiry they made into allegations made in a bid protest for the sponsorship and citywide corporate marketing program RFP.

The report thoroughly analyzed the process and the conduct of the two principal public officials, Assistant City Manager, Robert Middaugh and Development Coordinator, Jay Moore. The findings of the report are that there were no inappropriate actions in either a criminal or ethics context that warrants further investigation or prosecution by either the State Attorney or the Ethics Commission.

Also attached for the Commission reference is a copy of an LTC sent to the members of the City Commission prior to the initiation of the State Attorney investigation. Commission members will note that all of the information contained in the LTC has been verified as part of the State Attorney investigation.

With the closure of the State Attorney and the Commission on Ethics and Public Trust cases, it is now time to consider the appropriate next steps on this issue. We must review and perhaps rethink our approach and potential involvement in this area. A cautionary note is reported in the October 2004 edition of *Governing Magazine*:

The Contracting side of these deals requires special attention. Lingering unease about marketing in the public sector means that any deal will be closely scrutinized. In addition, competition for some of these deals – especially in the beverage business – can be so cutthroat that losing bidders have been known to sling mud at the contracting process after the fact. “The competitive nature of these industries is that if you pick one over the other, the loser will fight hard to kill the deal or sway the council,” says Mark Duebner in Dallas, Texas.

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Our recent experience serves as a clear example of this unfortunate practice. It is important for us to consider these unintended outcomes and determine whether we wish to continue to explore this potential revenue source and, if so, develop the appropriate safeguards and criteria which, hopefully will mitigate any potential pitfalls.

Shortly, I will refer a discussion item to Committee to evaluate this issue and to seek guidance and direction on how to proceed.

Should you require additional information, please feel free to contact me.

JMG\pw

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Attachment



STATE ATTORNEY

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FAX COVER SHEET

TO: Francis
W/Mayor David Dermer Office

FROM: Howard Rosen
Assistant State Attorney

MESSAGE:

NUMBER OF PAGES: 11 pages (including this cover page)

NUMBER DIALED: 305-673-7096

DATE AND TIME SENT: October 15, 2004

BY: Tony

**If you have any problems or questions, please call: Susi, at: (305) 547-0664.
Thank you.**

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PRELIMINARY INQUIRY

Public Corruption Unit

A.S.A.: HOWARD R. ROSEN

INVESTIGATION #: 54-04-149

SIGNATURE: Howard Rosen

DATE: September 21, 2004

Joseph M. Centorino
JOSEPH M. CENTORINO, Division Chief, PC Unit

DATE: 9/30/04

Jose J. Arrojo
JOSE J. ARROJO Chief Assistant

DATE: 10/15/04

SUBJECT MATTER: Inquiry into the City of Miami Beach Request For Proposals (RFP) 66-02/03, for the development and implementation of a citywide corporate marketing and sponsorship program.

INVESTIGATOR: BEVERLY MORRISON
AGENCY: Special Agent, Miami-Dade County Commission on Ethics and Public Trust

CONCLUSION:

This inquiry was initiated upon the receipt of a referral from Miami Beach Mayor David Dermer, who requested a complete investigation into this matter based upon a bid protest letter which the City of Miami Beach had received. The Miami-Dade County Commission on Ethics and Public Trust worked very closely with the Miami-Dade County State Attorney's Office on this investigation, and in fact at least one investigator from the Miami-Dade County Commission on Ethics and Public Trust was present for and participated in each sworn statement that was taken. Numerous sworn statements were taken, and based upon the facts as presented, there is insufficient evidence upon which to prove any criminal charges.

The City of Miami Beach became interested in taking the City of Miami Beach into the world of corporate marketing and sponsorship. This is a relatively new phenomenon wherein municipalities have been finding new sources of revenue, just as private enterprises have been doing for quite some time, by entering into sponsorship agreements with corporate America. The most obvious example of this in the private sector is in stadium naming rights. A stadium such as the one in which the Florida Marlins and the Miami Dolphins play was named for "Mr. Player", a division of Fruit-of-the-Loom. *Tropicana Field*, where the Tampa Bay Devil Rays play, is named for Tropicana Dole Beverages. Similarly, municipalities are beginning to enter into such sponsorship agreements. Under such an agreement, a City facility such as a tennis complex could be named "Evian Park", and the City would be able to enjoy a revenue source from Evian Water. Similarly, Hawaiian Tropic suntan products could become the official suntan products of South Beach, and would be distributed exclusively at city concessions on the beach. This could be another stream of revenue for the City. Snapple beverages could become known as the official beverage of Miami Beach. Miami Beach has a certain cache associated with it, and such products would enjoy that reputation, while Miami Beach would benefit financially. The beverage company or suntan product company would pay a certain percentage of its sales to the City, as well as pay a fixed price annually to the City for the privilege of being the sole vendor, or for the privilege of being known as the official product of the City, or of South Beach.

In the latter part of 2002, Joseph Jay Moore III was hired by the City of Miami Beach as its Development Coordinator. As Development Coordinator, one of Mr. Moore's primary responsibilities was to assemble and lead a team of city employees to explore the feasibility, potential, and means by which the City of Miami Beach could enter into such agreements. The committee was made up of various individuals from various departments within the City, most of which would have some sort of tie-in with, or be directly affected by, such corporate sponsorships. Included among others on the committee were the Director of Economic Development for the City, an Assistant City Attorney, the City's Public Information Officer, the Director of Parks and Recreation, and the Director of Tourism and Cultural Affairs.

To begin his search for the means by which to bring this new idea to fruition for the City of Miami Beach, Mr. Moore went onto the internet and searched for various marketing companies which had been involved in this process in the past with other municipalities, and which he could use as sources of information to guide him in the right direction. Through his research, he became aware of a number of firms whose names kept on recurring, which were involved in this type of marketing. These firms included a company called The Superlative Group, Inc. (hereinafter referred to as *Superlative*), Public Enterprise Group, and The Wilkinson Group. *Superlative*, which is located in Cleveland, Ohio, has a principal named Chris Lund. Mr. Moore was contacting people in these companies and getting the lay of the land, which he was reporting back to the other members of his committee. He was gathering as much information as possible, which included learning which other cities were engaged in these types of corporate partnerships, how it was working, how much money they were getting, and how they structured it.

Moore learned that *Superlative* had been hired as a corporate sponsorship consultant by Miami-Dade County. Moore met with Kevin Linsky, who was his counterpart in Miami-Dade County, to learn more about the process. Moore eventually spoke to Chris Lund at *Superlative*. Similarly, he spoke to individuals at Public Enterprise Group and The Wilkinson Group. He advised these people that the City of Miami Beach was interested in learning as much as it could about how corporate sponsorship works in the municipal arena. He advised them that the City officials may or may not ultimately get into the business, but that they were trying to learn as much as they could so that they could make a decision as to whether they wanted to move forward with it. Some of the companies, including *Superlative*, agreed to come down and put on a presentation to the committee as to their thoughts and what they had to offer. According to Mr. Moore, he made it clear to them that they were coming at their own cost and at their own risk, as the City might not even go through with corporate sponsorship in the end.

There are essentially two (2) separate components to the services which a marketing firm such as *Superlative* provides to a municipality. The first component is to conduct a marketing asset inventory, which is a physical inventory of the city's assets. This includes what tangible physical buildings the city has, what scoreboards it has in public parks, what concession stands it has, how many lifeguard towers it has, and the like. This inventory also includes an in-depth detailed analysis of the square footage of each facility, number of cars that pass by the building every day, and how many people go in and out of a building each day. A price tag is put on everything that has been inventoried, that is, what it is worth for Coca Cola to have their name on a sign in front of the Miami Beach Convention Center. The second component is to take the assets to market, and to find the corporate sponsorships.

Any contract which the City of Miami Beach enters into in excess of twenty-five thousand dollars (\$25,000.00) has to be bid upon through a formal Request For Proposals (hereinafter RFP) process. The contract which *Superlative* had entered into with Miami-Dade County was for one hundred and eighty thousand dollars (\$180,000.00). It was the considered opinion of the committee looking into this matter on behalf of the City of Miami Beach that perhaps they could just get the first component, the marketing asset inventory, by entering into a professional services agreement for under twenty-five thousand dollars (\$25,000.00). The committee did not think that any of the companies would be willing to do that, but they decided to at least ask. As it turned out, each of the firms agreed to do such an inventory.

Based upon the presentations made and the information gathered by Mr. Moore and given to the committee, the committee was most comfortable with *Superlative*. On March 24, 2003, Chris Lund of *Superlative* e-mailed to Mr. Moore a proposed offer, wherein *Superlative* agreed to do the marketing asset inventory for twenty-four thousand dollars (\$24,000.00) plus reimbursables not to exceed nine hundred dollars (\$900.00). *Superlative*, through Chris Lund, was therefore invited to make a presentation to the City Manager. In early June of 2003, Chris Lund and other representatives from *Superlative* then came into town and made such a presentation.

On June 12, 2003, Moore sent an e-mail to Miami Beach Assistant City Manager Robert Middaugh, wherein he provided him with a copy of the most recent version of the proposed *Superlative* contract. On June 23, 2003, Assistant City Manager Middaugh informed Mr. Moore, via e-mail, that the City Manager would rather bid the entire service out now as a more all-encompassing RFP rather than just a professional services agreement for the marketing asset inventory. Lund was informed of this decision. In his sworn statement rendered to the undersigned Assistant State Attorney, Miami Beach Assistant City Manager Robert Middaugh stated that as the City was getting to the point of deciding to actually execute a contract with *Superlative*, it became apparent to the City that there were a lot of other vendors who would be equally interested in doing the work for the City, and the City did not want to give the perception that *Superlative*, because they were going to do the marketing asset inventory, had an advantage over the other possible vendors who would choose to submit proposals for the second piece of the project. Middaugh said that this way everybody had a fair chance of being selected for the second piece, and that it was for this reason that the City Manager decided to combine the entire project into one piece of work in an all-encompassing RFP.

On July 17, 2003, Chris Lund e-mailed Moore and asked him for an update on the status of the matter. That same day, Moore responded via e-mail, and advised Lund that he (Moore) believed that they were "now operating under the 'Cone of Silence' which strictly proscribes the nature and extent of permissible communication between me as a City employee, and a possible bidder on City services in which I have responsibility."¹ Moore further advised Lund that as early as July 30 an item may be placed before the City Commission which would authorize the City to issue an RFP. He told Lund that he had submitted the contact information for *Superlative*, as well as for other sponsorship consultants whose work had come to his attention through his research, to the Purchasing Department, and suggested that notification of the RFP be sent to each when it was ready. Moore told Lund that the City Clerk's Office (for approved actions of the City Commission) and the Purchasing Department (for particulars of responding to the RFP) may be the most appropriate points of contact from then on. Lund responded via e-mail that he would proceed with any further communications as directed, and stated that he was very excited to compete for the City's business.

On July 30, 2003, the Mayor and the City Commission of the City of Miami Beach issued a resolution, upon the recommendation of the administration, authorizing the issuance of a Request For Proposals (RFP) for the development and implementation of a citywide corporate marketing and sponsorship program. Consequently, on August 20, 2003, RFP 66-02/03 was issued via BidNet, which in turn contacted 72 vendors. Twelve (12) of these vendors downloaded the RFP package. By the specified due date of September 23, 2003, the Procurement Division received eight (8) responses to the RFP. The eight groups which submitted proposals were as follows:

1. The Superlative Group, Inc.
2. Sports & Sponsorship

¹ The "Cone of Silence" is embodied in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance at section 2-11.1(t). It is a prohibition on communication between vendors and government staff. The cone goes into effect after advertisement of the RFP, RFQ or bid. It terminates generally, when the City Manager makes his or her written recommendation to the County or City Commission.

3. The Wilkinson Group
4. Global Branding Group
5. Public Enterprise Group
6. Pantheon International, L.L.C.
7. IMG
8. Envision Consulting Group

On October 17, 2003, the City Manager, via a Letter to the Commission (LTC), appointed an Evaluation Committee consisting of various individuals, including, among others, the Tourism and Cultural Development Director, Mocre (the Parks and Recreation Development Coordinator), and a marketing consultant. Each of the groups which submitted proposals was invited to make a fifteen (15) minute presentation to the Evaluation Committee, followed by a fifteen (15) minute question and answer session. All of the groups made such a presentation, except for Envision Consulting Group, which elected not to make a presentation to the Committee.

During its deliberations after the presentations were made, the Committee unanimously agreed that the following four firms should be short-listed and receive further consideration:

1. Sports & Sponsorship
2. IMG
3. The Wilkinson Group
4. Public Enterprise Group

The four (4) firms were ranked in the order in which they are listed above. In reviewing the submissions and the Committee's recommendation, there were some key questions for which information had not been provided or for which inadequate material was provided. The City Manager requested that such additional information or clarification be provided by the top four (4) firms.

After receiving the further information and clarification, the Committee reconvened on April 2, 2004. After being fully briefed of the Committee's recommendation, and after reviewing the proposals and additional information provided by the top four (4) firms, the City Manager recommended that IMG be ranked as the number one firm. Consequently, at an April 14, 2004 City Commission meeting, the administration was going to recommend that the Mayor and the City Commission of the City of Miami Beach issue a resolution authorizing the administration to enter into negotiations with IMG, and should the administration not be able to negotiate an agreement with IMG, authorizing the administration to negotiate with Sports & Sponsorship.

On April 9, 2004, prior to the April 14, 2004 City Commission meeting, Chris Lund, of *Superlative*, sent a letter to the City Manager of Miami Beach, wherein he protested the bid result. In order to investigate the bid protest, the matter was withdrawn from the Commission Agenda by the city administration, as is the customary practice when a bid protest is received that requires appropriate research and review.

Lund alleged in his letter that the winning selection was "unduly, and inappropriately influenced by an existing vendor" with the City of Miami Beach. He stated in his letter that "officials within city government knew of and were aware of that influence, and communicated, through telephone conversations and voice mail to *Superlative*, that adding this particular vendor to the bid would help ensure a winning proposal."

The particular vendor to whom Lund was referring was Michael Milberg. Milberg was cooperative in this investigation, and in the beginning provided a copy of a series of e-mails that he exchanged with Assistant City Manager Middaugh. Milberg eventually came in and voluntarily rendered a sworn statement to the State Attorney's Office and the Ethics Commission.

Milberg is the principal of a company called Miami-Metro Vending Corporation (hereinafter MMVC). Through MMVC, Milberg had a contract since 1983 to provide beverage vending services to the City of Miami Beach through beverage vending machines at public facilities. Milberg is the Chairman of the Board of the Miami Beach Chamber of Commerce, a position he has held for almost three (3) years. Milberg stated that through attending various public meetings and through speaking to various individuals, he heard that the City of Miami Beach was looking into the idea of

possibly implementing a citywide corporate marketing and sponsorship program. Early on in the process, way before it was decided by the City Manager that an RFP would be issued, Milberg learned that the City of Miami Beach was consulting with *Superlative*. In his sworn statement rendered to the undersigned Assistant State Attorney, Miami Beach Assistant City Manager Robert Middaugh stated that early on in the process Milberg approached the City with an offer to try to structure some sort of a deal with one of the larger soft drink vendors. According to Middaugh, the City decided that Milberg was not the guy to do it, and that there were other people who could help in a more comprehensive fashion. Middaugh said that when nothing came of their conversation with Milberg, that is probably when Milberg first learned of the City's interest in proceeding in a more global fashion. Middaugh stated that as the City moved forward, there was a lot of public discussion, meetings, memorandums, and e-mails on the topic, and that Milberg could have learned that *Superlative* was a company that was interested in working with the City from any number of these sources. Milberg's beverage contract, which was a multi-year contract which had been renewed several times, had expired in September of 2002. Ever since then the contract has been on a month-to-month basis, although the terms of the contract provide that such a month-to-month renewal may not extend for more than six (6) months.

One of the easiest items to be tied into any sort of a comprehensive corporate marketing and sponsorship program is a beverage vending contract. In a sworn statement rendered to the undersigned Assistant State Attorney, Mr. Moore referred to this as the "lowest hanging fruit," meaning that it was the easiest to tie in. Beverage vending services could be provided by a company such as Pepsi, Coke, Snapple, or any number of beverage companies. They could become the official beverage of Miami Beach, and could pay the City of Miami Beach a fixed monthly or yearly fee for the privilege of being the official beverage. They could also provide vending services and additional monthly revenue from such vending services.

Milberg is an astute businessman, and recognized that if the City were to enter into a comprehensive corporate marketing and sponsorship program, his MMVC contract would probably be rendered obsolete. Accordingly, Milberg wanted to somehow partner with *Superlative*. On August 6, 2003, Milberg had lunch with Miami Beach Assistant City Manager Robert Middaugh. They discussed several unrelated matters, and a discussion was also held as to the City's desire to enter into the comprehensive corporate marketing and sponsorship program, and the fact that *Superlative* was the group that the City was then looking at to assist them.

On August 10, 2003, Milberg sent an e-mail to Assistant City Manager Middaugh, wherein he was following up on their lunch conversation. City Manager Jorge Gonzalez was also sent the e-mail from Milberg. Milberg stated as follows:

"Thank you for your time. I look forward to working with you as we try to advance the City. I thank you for your candor and assurance of responsiveness as we move forward."

The e-mail from Milberg to Middaugh continues, and Milberg states:

"I have researched *Superlative Group* via their website and am interested in contacting them. Could you forward me a contact person in their Cleveland office? I have talked with Onboard Media with hopes of joint venturing sponsorship efforts with BeachTV (Channel 19 launch December 1st). Also, last Thursday, conversations regarding sponsorships with Boucher Brothers and the Beach Concession took place with Jorge and Christina."

Milberg represents Onboard Media. Onboard Media owns BeachTV, which is a cable channel which provides relevant programming to hotel rooms on Miami Beach, as well as to residents in the City. Boucher Brothers are two (2) other entities which Milberg represents. Boucher Brothers provides beach concessions, including beach chairs and umbrellas, and food and beverages at numerous hotels on Miami Beach, as well as on the public beaches.

The very next day (August 11, 2003), Assistant City Manager Middaugh responded to Milberg's e-mail as follows:

"I have spoken to Jay Moore and asked him to get you the best contact with *Superlative*. If he has not called already, expect it. *I do not think we can call them directly as the*

RFP is on the street and we may have cone of silence issues. Jay is also checking on that."

Emphasis provided

In fact, the RFP had not been issued yet. On July 30, 2003, the Mayor and the City Commission issued the resolution, authorizing the issuance of the RFP, but the actual RFP was not issued until August 20, 2003. However, based upon the above e-mail from Middaugh to Milberg, it seems as if Middaugh believed that the RFP had already been issued.

Later on the same day that Middaugh sent the August 11, 2003 e-mail to Milberg wherein he stated that the RFP was already on the street and there may be cone of silence issues, Milberg e-mailed Chris Lopez in Procurement asking him when the RFP for sponsorship was going to be issued. Lopez responded via e-mail that the RFP would be issued by August 13, 2003.

On August 12, 2003, at 7:14 P.M., Assistant City Manager Middaugh asked Moore, via e-mail,

"Did you get the info on superlative to Milberg?"

The next day, August 13, 2003, at 8:08 A.M., Moore responded to Middaugh as follows:

"Yes. Left a message on his voicemail the following morning...

... Would you like me to call Michael again?"

That same morning, Assistant City Manager Middaugh responded to Moore that he would like him to call Milberg again.

The contact information was given to Milberg. Additionally, Miami Beach Assistant City Manager Middaugh called Chris Lund at *Superlative* and left him a message wherein he told him to expect a telephone call from Michael Milberg. The placing of this telephone call and the message left by Assistant City Manager Middaugh is the central issue in this investigation.

Milberg contacted *Superlative*, and after speaking with a secretary then spoke to Chris Lund.

On August 19, 2003, Jay Moore advised Middaugh via e-mail that Chris Lund had left a message that either he or his associate planned to visit with Mr. Michael Milberg the following Tuesday.

On September 1, 2003, through one of his own companies, Big Dog Ventures, Inc., Milberg provided a proposal in the form of a written memorandum to Lund at *Superlative*. The proposal suggested that a joint venture, or partnership association between various entities, be submitted in response to the RFP on behalf of *Superlative*. The entities which Milberg proposed should be involved are The *Superlative* Group, Onboard Media, Boucher Brothers Management Incorporated (BBMI), Boucher Brothers Miami Beach, L.L.C. (BBMB), Big Dog Ventures, Inc., and Miami-Metro Vending Corp. (MMVC). Other than *Superlative*, each of these proposed entities are either represented by Milberg or are entities in which he is a principal. The final line of Milberg's memorandum to Lund states that "as represented, *Superlative* Group will decide their option of participation with the aforementioned entities by the close of Wednesday, September 3, 2003."

Early on in the beginning of the process of Moore researching the feasibility, potential, and means by which the City of Miami Beach would enter into a citywide corporate marketing and sponsorship program, when he was still talking to Lund about having *Superlative* conduct a marketing asset inventory under a professional services agreement for under twenty-five thousand dollars (\$25,000.00), Moore recognized that Lund was knowledgeable in corporate marketing and sponsorship rights. The City was in a contract with the Boucher group. The Boucher group has the concessions on the public beaches, renting beach chairs and umbrellas, and selling food and beverages on the beach. The contract between the Boucher group and the City of Miami Beach was apparently silent on the issue of who holds certain potential

marketing and advertising rights. For example, could the Boucher group then turn around and cut a deal with Hawaiian Tropic, and be paid a certain amount of money from Hawaiian Tropic to become the official suntan products of South Beach, or is this a right that only the City of Miami Beach could sell? While the City of Miami Beach claims that it held these rights, the vendor claimed that it held these rights. The vendor was represented by Michael Milberg. Because Moore recognized that Lund was knowledgeable in this area, Moore sought Lund's advice in this regard. Moore asked Lund what the City should be looking out for. Lund advised Moore that in the future, the City of Miami Beach needs to be careful, and not give away any such rights, as they could be a revenue stream for the City. Moore said that he believed that the Boucher agreement was coming up for renewal, and that he was considering recommending that the City hire *Superlative* on a one-time basis to advise them and to represent their rights in the renegotiation of the Boucher contract.

On Wednesday, September 3, 2003, Chris Lund responded to Milberg's proposal to form a joint venture, or a partnership association with *Superlative*, as follows:

"Dear Mr. Milberg:

Thank you for sending your proposal to be included in our bid for municipal marketing services. My colleagues and I spent the better part of yesterday considering how and why each of OnBoard, BBMI, BBMB, Big Dog, and Miami-Metro Vending could be integrated into the bid. We certainly recognize the benefit of local involvement in our bid.

We were surprised to see other companies in your proposal besides OnBoard. We did not know that BBMI, BBMB, Big Dog Ventures, and Miami-Metro Vending were all part of your proposal, as they were never discussed in the conference call.

First, from the viewpoint of pure "bid response mechanics", the sheer (bid) complexity of a six-company bid (the five companies you propose plus *Superlative*) is out of sync with the size and scope of the very straightforward RFP issued by the City of Miami Beach. A bid with six companies for a project of this size is atypical. There would be challenging communication issues in the RFP, from the selection committee's viewpoint, about each firm's relative benefit.

Second, while the benefits of partnering with OnBoard and its access to a large advertising inventory across several media platforms are obvious, the benefits of bringing on the other 4 firms are, respectfully, less impactful. In addition, these firms create transparency issues, both in fact and appearance, for us, particularly in a public sector competitive bid setting. With the information at hand, we are unable to reconcile your ownership/business relationship with all these companies (particularly Big Dog and MMVC) with the influential position you hold as the Chairman of the Board of the Chamber of Commerce for the City of Miami Beach. As I mentioned on the conference call, the conflict creates (prima facie) an obligation to disclose those relationships in the bid. *Superlative* is comfortable with conflicts that are disclosed, if the relationship makes sense in terms of value to the City of Miami Beach. Such conflicts do not by themselves create a problem for us.

However, the totality of all our information on these relationships must be tested against the mission of the RFP: to be advocates for the City of Miami Beach in the development and exploitation of its marketing rights. My business background and experience with conflict-of-interest issues is fairly deep, so I raise these issues from the viewpoint of someone who has dealt with such issues before. It does not make me an expert, but I do have a framework from which I view these things. To your credit, you have been upfront about these relationships. I am not in a position to render an opinion about what is in your best interest. I can only view situations from what I believe is in *Superlative's* best interests.

In this case, *Superlative* cannot dismiss these conflicts through a simple disclosure. At the very least, we feel uncomfortable in a situation where we are likely to make business recommendations that may not be in our bid partner's best interest. At worst, we run the risk of misunderstandings with each other. We have never met, much less worked together. Given all that, it seems to be in both our interests not to be in a position where there (sic) even an appearance that we might be less than rigorous (sic) advocates for the City of Miami Beach. In terms of partnering on this RFP, that is an untenable position for *Superlative*.

Regretfully, we must decline your offer of a partnership with these entities. A partnership must be comfortable for both parties. We cannot get to a comfort level, nor do we wish to expend additional resources trying. So I doubt we would be the ideal partner for OnBoard, et al. We acknowledge that we may not know every fact, but with the response deadline looming, and in respect to both our interests, we are giving you our answer today, as you requested."

Lund clearly indicated in his response to Milberg that he felt that there was a conflict-of-interest in at least one of the parties being an advocate for the City of Miami Beach in the development and exploitation of its marketing rights. He was probably referring to the fact that he had already previously had the discussions with Moore about the fact that when the City of Miami Beach renews its contract with the Boucher Group, they need to make sure that they are not giving up certain potential marketing and advertising rights to Boucher which Lund felt that the City of Miami Beach should retain. *Superlative*, through Lund, would clearly be making a business recommendation to the City which would be adverse to the interests of BBMI and BBMB. This could clearly be viewed as a conflict-of-interest between not only the City and BBMI and BBMB, but also between the City and Milberg, who represents BBMI and BBMB. *Superlative* submitted its response to the RFP without any partnership with Onboard Media Boucher Brothers Management Incorporated (BBMI), Boucher Brothers Miami Beach, L.L.C. (BBMB), Big Dog Ventures, Inc., Miami-Metro Vending Corp., or Michael Milberg.

On September 19, 2003, IMG submitted its response to the RFP. Included in the response is a "Memorandum of Understanding" between IMG, Boucher Brothers Management, Inc., Boucher Brothers Miami Beach L.L.C., Miami-Metro Vending Corporation, and Onboard Media. IMG was ultimately the winning bidder.

When asked in his sworn statement how he ultimately came to be on IMG's submission, Milberg told the undersigned Assistant State Attorney that he was given the name by David Whitaker, who is the Senior Vice President of Marketing and Tourism for the Greater Miami Convention and Visitors Bureau.

The placing of the telephone call to Chris Lund at *Superlative* and the message left by Assistant City Manager Middaugh that Lund should expect a call from Michael Milberg is the central issue in this investigation. According to Chris Lund, the message was left immediately prior to the Cone of Silence period. Lund said that in the message Middaugh stated that since they were still outside the Cone of Silence period, he felt that it was okay for them to speak. Lund said that in the message Middaugh stated that he was not telling *Superlative* what to do, but that it would be difficult to lose the bid if *Superlative* added Milberg to its proposal.

In his voluntary sworn statement which he gave to the undersigned Assistant State Attorney, Assistant City Manager Middaugh admitted that he called Chris Lund at *Superlative* to let him know to expect a call from Milberg. Middaugh stated that he never actually spoke to Lund. He stated that he called Lund and left a message for him right before the RFP went out to let him know to expect a call that he was going to be getting from Michael Milberg, who had asked for contact information as to who he could speak to at *Superlative*. Middaugh stated that the purpose of the call was to let Lund know that Milberg would be calling, and what the call was about so he would understand it. Middaugh said that in the message which he left he advised Lund that the decision as to whether he wanted to work with Milberg or not was *Superlative's*. In his sworn statement, Middaugh said that he told Lund in the message that they (*Superlative*) had to make the best business decision that they could; that if they worked with Milberg, that was fine; and that if they did not work with him that was fine also. In his sworn statement Middaugh said to the undersigned that he wanted Lund to understand that the City was not pushing Mr. Milberg on him. Middaugh said in his statement that he did not believe that he said in that message that it would be difficult for *Superlative* to lose the contract if Milberg was included.

There is obviously some discrepancy between Mr. Lund's recollection and the recollection of Middaugh as to whether or not in the message Middaugh told Lund that it would be difficult for *Superlative* to lose the contract if Milberg was included in *Superlative's* proposal. In his April 12, 2004 bid protestation letter, Chris Lund alluded to the fact that he had replayed that voicemail, leading the reader to conclude that the message was saved, and still existed. If in fact it was saved, it would be very easy to listen to exactly what Middaugh said on that message. Based upon conversations with Lund, the media has reported that he still had the message. In fact, in first speaking to Lund, the undersigned was led to believe that Lund still had the message. Eventually Lund admitted that he did not have the message any longer. According to Lund, the message was left on his cell phone voicemail in August of 2003, and was lost by September of 2003. The bid protestation letter, which brought Lund's allegations to light, was not written until April of 2004, a full seven (7) months after the message was lost.

The undersigned immediately worked closely with Nextel, and made every effort to retrieve the message. Unfortunately, Nextel stated that the message was completely irretrievable, as it no longer existed anywhere in the system.

One could see how, if an individual who was seeking to enter into a business relationship with a city received a telephone call from an Assistant City Manager telling him to expect a telephone call from another vendor, this could easily create the impression that the city wants that particular vendor to be included somehow in the proposal. After all, why else would the Assistant City Manager bother to give Milberg *Superlative's* contact information at all, or why else would an Assistant City Manager call Chris Lund at *Superlative* and tell him to expect a call from Milberg? This is especially so considering Middaugh had just stated in an e-mail that *"I do not think we can call them directly as the RFP is on the street and we may have cone of silence issues."*

In fact, there was no Cone of Silence issue at that point, as the telephone call was made from Assistant City Manager Middaugh to Chris Lund at *Superlative* on August 13, 2003, and the Request For Proposals was not issued until August 20, 2003.

The giving of Lund's contact information at *Superlative* to Michael Milberg and the placing of the telephone call from Middaugh to Chris Lund for the purpose of letting Lund know to expect a telephone call from Milberg begs the question of whether these efforts would have been made if the party involved was someone other than Michael Milberg. Clearly, at the time, Milberg felt that it was financially beneficial for him to contact *Superlative* for the purpose of making a business partnership proposal. Moore, in his sworn statement rendered to the undersigned Assistant State Attorney, stated that Michael Milberg is an influential person in the City, and a decision-maker. Moore said that because Milberg has business deals with the City, he "...had a relationship with the City that would go beyond would - - rise higher than - - that of a normal citizen." Moore stated that Milberg has a high political profile in the City and is deeply invested financially in the City.

While there is insufficient evidence upon which to file criminal charges for bribery, the Advocate for the Miami-Dade County Commission on Ethics and Public Trust has been closely consulted throughout this investigation for the purpose of determining whether there is sufficient evidence upon which to file an ethics complaint against either Assistant City Manager Middaugh or Mr. Moore.

Accordingly, the following Miami-Dade County Code of Ethics and Conflict of Interest Ordinances were considered in this investigation:

Section 2-11.1(g) Exploitation of official position prohibited:

No person included in the terms defined in subsection (b)(1) through (6) shall use or attempt to use his official position to secure special privileges or exemptions for himself or others.

Section 2-11.1 (p) Recommending professional services:

No person included in the terms defined in subsection (b)(1) through (6) may recommend the services of any lawyer or law firm, a architect or architectural firm, public relations firm or any other person or firm, professional or otherwise to assist in any transaction involving the [City] or any of its agencies.

The nature of the allegations raised in this investigation included the possibility that Assistant City Manager Robert Middaugh and/or Joseph Jay Moore III, Development Coordinator for the City of Miami Beach, might have exploited their official positions by intervening on behalf of Miami-Metro Vending Corporation owner Michael Milberg in his attempts to form an alliance with the companies responding to the City's RFP 66-01/01.

Both Middaugh and Moore admit that they contacted Chris Lund at *Superlative* to let *Superlative* know that Milberg would be calling them (*Superlative*). Both men deny telling *Superlative* that if *Superlative* partnered with Milberg it would all but assure that *Superlative* would be awarded the contract with the City. They insist that all they relayed to *Superlative* was the fact that Milberg would be contacting them.

The investigation has revealed that Milberg asked Middaugh for the name of a contact at *Superlative*. Middaugh admits that he provided Milberg with the name and number for Chris Lund at *Superlative*. Middaugh also states that he telephoned Lund to let him know that Milberg would be calling him.

Since *Superlative* no longer has the recording of the telephone message allegedly left by Middaugh, it is impossible to know exactly what was said.

Based on the above, the Advocate for the Miami-Dade County Commission on Ethics and Public Trust and the undersigned Assistant State Attorney are of the opinion that there is no conclusive proof sufficient to sustain the filing of an ethics complaint against either Middaugh or Moore. This inquiry is now closed.

cc: Jose J. Arrojo

CITY OF MIAMI BEACH
Office of the City Manager
Letter to Commission No. 098-2004



To: Mayor David Dermer and
Members of the City Commission

Date: April 29, 2004

From: Jorge M. Gonzalez
City Manager

A handwritten signature in black ink, appearing to read "Jorge", written over the printed name.

Subject: SPONSORSHIP RFP AND BID PROTEST

The purpose of this LTC is to provide you information regarding a request to authorize negotiations with the recommended vendor in a sponsorship RFP process which was on the April 14th City Commission meeting agenda. The item was withdrawn due to a timely bid protest received addressed to me. Subsequently articles were written in the media regarding the process and erroneous allegations have been made.

Traditionally, I would make every effort to ignore the inflammatory and inaccurate coverage; however, in the situation where ethics and integrity are involved, such allegations can not go unresponded or left uncorrected.

This LTC will review in detail the process that was followed for the entire RFP relative to sponsorships and identify the different parties involved at each step of the process.

PROCESS

The notion of sponsorships as a revenue generating support mechanism for City programs and projects was first identified and communicated to the City Commission as part of the Parks and Recreation Blue Ribbon Citizens Committee Report that was submitted in May 2002. The Blue Ribbon Committee specifically suggested that the City undertake enhanced efforts to identify corporate opportunities to support Parks and Recreation programming and City activities.

In subsequent investigation of methods to implement the Blue Ribbon Committee recommendation, the City learned that a number of communities on a national basis have undertaken sponsorship opportunities resulting in substantial flows of revenue to the benefit of those particular communities. Typically those sponsorship opportunities have taken the form of multi-year soft drink endorsements but have also recently included other national corporations.

In order to focus appropriate attention on this important endeavor and to help implement the recommendation, the City hired an individual to address this subject and to provide technical assistance. Mr. Jay Moore was hired on December 16, 2002 to focus on sponsorship opportunities and to help develop means and methods to assist the Parks and Recreation Department. In addition to background research associated with national sponsorship opportunities, Mr. Moore has also been very successful in attracting

advertising to the City's Recreation Review Magazine to the point that most of the costs of publishing and mailing the document to every household in the community are now supported by advertising.

The initial efforts of the City to implement a sponsorship program involved national research into successful undertakings by other municipalities in this particular area. A number of cities were identified primarily in the state of California that had experienced success with a sponsorship program. The City obtained contracts from the cities, spoke to the city personnel and also made contacts with various representatives of the industry in order to better understand the sponsorship arena and to gather information for a City program.

As part of the City's early due diligence, it was quickly established that participating in the national sponsorship arena would require specialized help and assistance in order for the City to maximize opportunities for success.

The City proceeded to identify a number of national firms that had assisted communities in some way in national sponsorship programs and contracts. One of the firms contacted was the Superlative Group. The Superlative Group was under contract to Miami Dade County for similar work and was also a subsequent bidder in the City's RFP process. The Superlative Group also filed the bid protest letter that has sparked this particular discussion.

The City staff reviewed the credentials and experience of the different firms that had been contacted and made a preliminary determination that the Superlative Group would be able to assist the City in the development of a sponsorship program. The sponsorship program was to be two part undertaking with the first part being the development of an asset inventory by a consulting firm for less than \$25,000 and the second part to be a competitively bid contract to assist the City with a sponsorship program. The approach was intended to give the City as much information as possible in the first part, before having to solicit a consultant for the larger contract in the second part. Discussions with the Superlative Group progressed to the point of discussing potential contract terms for completing the first part of the work, an asset inventory, to prepare for a formalized RFP process to follow.

As the discussions with the different consulting groups including the Superlative Group progressed, it became apparent that there were other potentially interested vendors or providers of service in the market place that the City might appropriately need to contact or invite into a process. In addition, it became apparent through research that there was a potential for a successful company to enter into a contract with the City for consulting services that could generate over the life of a contract a substantial sum of funds. Given the interest of other vendors in the market and the dollar amounts prospectively involved in a contract, the City made the specific and conscious decision to end an informal selection process for a two part project and move to a more structured and formalized RFP to invite competitive proposals for a complete package of sponsorship assistance to the City.

On July 30, 2003, the City Administration presented to the City Commission a request to issue an RFP for consulting services to assist with national corporate sponsorship opportunities. The City Commission unanimously approved the RFP and an RFP was subsequently issued by the City Administration.

Consistent with the City's RFP practices, a Selection Committee of staff and residents was appointed and the membership was conveyed to the City Commission for comment in an LTC dated October 17, 2003. No comment was received from the Commission and the Selection Committee proceeded to review the RFP proposals.

Eight proposals were received and seven were reviewed by the Selection Committee. One vendor elected not to present to the Committee. As a result of the Selection committee review and discussion, Sports and Sponsorship was ranked as the number one vendor and IMG the second vendor in the ranking process. Both scores and evaluations on the abilities and credentials of the two firms were ranked very close. The proposal of Superlative Group was not ranked in the top four proposals by the Committee.

In preparing this item to present to the City Commission, the City Administration determined that there were several key and important facts that had not been fully developed as part of the Selection Committee review discussion. As such, a supplemental questionnaire was sent to the leading four proposers in the RFP Selection Committee review process. Only the four proposers ranked by the Committee were invited to submit additional information. This process of requesting additional information is not an unusual part of the procurement process and is used to assure that full information on proposals is available to the Administration and Commission.

The Administration received the written responses of the leading four vendors. Before sending the item to Commission for consideration, the original selection Committee was reconvened and provided the supplemental materials for review and comment. Only four of the members were available to review the supplement.

The Administration evaluated all of the information available, together with the Selection Committee discussion and information to develop a recommendation for the Commission. As the original materials submitted for review by the selection committee were rather general, the supplemental questions which were very focused and specific (copy attached) formed an important basis for a recommendation. Supplemental information on projects completed for similar entities as the City, details on the project team, and more specific and detailed information as to the method of approach to the project were solicited. As a result of the much more detailed material submitted by the leading four vendors, it was determined that IMG had a better overall technical proposal for the City, broader actual experience in performing sponsorship work and a more experienced project team that had worked together on a number of projects over a period of years.

A recommendation was forwarded to the City Commission for the April 14th City Commission meeting to authorize the City Administration to enter into contract negotiations with the firm IMG.

Prior to the April 14th City Commission meeting, the Administration presented to the members of the Finance and Citywide Project Committee at its April 6th meeting, a background discussion item so as to reacquaint the members of the Finance Committee with the background associated with the sponsorship program and work that had been completed to date. No action was required or requested and the Finance Committee recommended that the entire matter be moved to the City Commission for final determination.

The materials that were submitted to the City Commission for review and consideration were the Selection Committee review and comments, the Administration's review and comments and the background proposal information made by each of the two highest ranked vendors. The only action sought from the City Commission was to authorize negotiation for a contract.

Prior to the April 14th City Commission meeting, a bid protest letter was received from the Superlative Group relative to the recommended rankings and the request for authorization to negotiate a contract. In order to investigate the Superlative Group bid protest, the matter was withdrawn by the City Administration from the Commission Agenda, as is the customary practice when a protest is received that requires appropriate research and review.

Media Inaccuracies

Specific inaccuracies regarding the previously described process which are contained in the media coverage and require clarification and correction include the following:

- It has been reported that a prepared contract was included in the agenda material and recommended for approval by the members of City Commission.

As indicated previously, the material submitted to the City Commission included the proposals by the two leading firms and the Administration's review relative to those professional qualifications. While the proposers included desired contract information, no recommendation was forwarded to the City Commission on a contract. The Commission Memo indicated that the Finance Committee recommended proceeding with a negotiation strategy for a contract with the successful firm that relied more heavily on a commission arrangement for payment of the consulting firm rather than front end fees. No recommendation on contracts was submitted to the Commission and no action was requested or required by Commission on contracts.

- Assertions have been made that City officials were aware of the alleged influence exerted by Mr. Michael Milberg to influence the RFP process.

This statement is factually inaccurate. Mr. Milberg was one of the sponsorship vendors that was contacted in the early or preliminary stages of due diligence by the City inasmuch as he had a contract with the City for the vending machines on City properties. There were no conversations with City officials at any level with Mr. Milberg once the RFP process had been commenced. No City officials are aware of private

conversations which might have been undertaken between Mr. Milberg, the Superlative Group or any other of the vendors in the RFP process. It is factually inaccurate to say that City officials at any level were aware of influence alleged to have been asserted by Mr. Milberg in this process.

- It has been reported that the City Administration was asking the Commission to approve a specific monthly retainer and contract arrangement.

The representation is factually inaccurate as the request to the Commission was specifically to request authorization to negotiate. The Commission Memo specifically referenced the Finance Committees suggested strategy of contract structure, which was to have a no front end cost contract and commission reimbursement as a basis for retaining a firm.

Conclusion

The media attention clearly attempts to establish a conspiracy and improper behaviors where none exist. It is very unfortunate that with the facts that are readily available and verifiable and public officials who are willing to address such information, that some in the media would choose to print such inaccurate and inflammatory coverage relative to a process undertaken by the City. The process undertaken by the City for a sponsorship program was intended to be a benefit to the City, and was undertaken with the appropriate due diligence and research associated with any of the projects which the City pursues. As most of you know on a personal level, this type of inaccurate and misleading coverage occurs occasionally in the public sector. It is one of the very great frustrations of the public sector to be subjected to this type of innuendo with no ability for recourse or a venue to correctly report facts.

As is customary, upon receipt of the timely bid protest, I immediately referred the matter to the City Attorney's office and our Procurement Director for appropriate review and action. Staff had begun to investigate the issues raised and had contacted Superlative to seek greater input and information when they were directed to discontinue their efforts and it is my understanding that this matter has since been referred to the State Attorney's office for investigation. While in this instance, the process has been altered, I assure you that I and the Administration will cooperate fully with the State Attorney, however they determine to proceed.

JMG\RCM\sam
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Superlative

2706 Franklin Blvd
Cleveland, OH 44113
(216)592.9400

April 12, 2004

Mr. Jorge M. Gonzalez
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

RE: RFP 66-02-03

Dear Mr. Gonzalez:

Pursuant to the fax received by The *Superlative* Group, Inc. at 4:46pm, on Friday, April 9, 2003 by your office, (whereby bidders are given 1.5 business days to file a protest), The *Superlative* Group, Inc. respectfully submits a protest to the bid result on the grounds the winning selection was (1) unduly, and inappropriately influenced by an existing vendor, and (2) that officials within city government knew of and were aware of that influence, and communicated, through telephone conversations and voicemail to *Superlative*, that adding this particular vendor to the bid would help ensure a winning proposal. As you will see from the note attached that we sent to the vendor (certified mail), we chose not to honor his request to partner on our bid, because of several conflicts of interest, both in fact and appearance, after his pursuit of *Superlative* as a partner.

We also assert that a city official told us that we had been awarded the contract for the work contemplated under the above mentioned RFP in a previous City of Miami Beach competitive bid whereby a city official notified *Superlative* that we were the unanimous choice of a committee of City of Miami Beach staff specifically assembled to review and recommend a marketing consulting firm. We relied on his assertions that a meeting - described as a formality - was required and on June 3, 2003 we flew three executives (including our founder and CEO) to Miami Beach to meet the City Manager and some other staff members.

We were then told shortly thereafter that our award had been withdrawn and that a formal competitive bid was to take place. Shortly thereafter, a city official contacted us to suggest that we talk with a specific existing vendor. The city official indicated to our firm that it might be in our best interest to "have a conversation with the existing vendor" and that he (vendor) was a "very influential person in the community". He also directed - us to another city official concerning the vendor. Subsequently, the city official left me a voicemail immediately prior to the Cone of Silence period, stating that (1) since "we were still outside the Cone of Silence period, he felt it was okay to speak with us, and (2) that he was not telling us what to do, but it would be difficult to lose the bid if we added the vendor to our proposal. We have replayed that voicemail to our firm's senior management, and we were all shocked that a city official would communicate such a message.

All of this appeared very inappropriate to us, given that one city official had already told us (prior to the Cone of Silence Period under RFP 66-02-03) that:

Mr. Jorge M. Gonzalez

April 12, 2004

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- City of Miami Beach was in a dispute with the vendor in question regarding advertising rights on the beach, with the vendor claiming that since his concessions/beverage contract (through a company he controls/influences) was silent on the subject of advertising rights, that he was claiming these rights were his. This city official called me on several occasions to discuss this matter and asked my advice. I told the city official that if the City of Miami Beach was embarking on a marketing and sponsorship campaign, that it should rigorously defend its claim for those rights, otherwise the financial results of any future sponsorship program could be materially and adversely affected. I also recommended that he immediately bring this to the attention of the City's law office, because there was so much potential revenue for the City at stake. He then said he was in discussions with staff about hiring *Superlative* on an hourly basis just to review this one issue. That never happened.
- The existing vendor's firm was in default (words used by the city official) of its existing contract with the City.
- In contemplation of RFP 66-02/03, he had given our name to the vendor. The vendor almost immediately called our offices seeking to participate in our bid. I asked the vendor about the advertising rights dispute he was having with the City, and he stated clearly that since the contract was silent, he (and his legal advisors) felt they were entitled to those rights. He then asked to participate with us since we had won the previous bid and were in his words "wired to win" the upcoming RFP. It was clear that his comment was made because he had spoken to City officials who had told him we had won the recent bid. I had an active conversation with the vendor and expressed doubts about a joint bid, given the conflicts. We agreed that he would send a proposal on how to work together for *Superlative's* consideration. That proposal is attached, along with *Superlative's* response.

The vendor's refusal to acknowledge any conflict of interest as a participant in this RFP should be troubling to the City. The fact that he is part of the winning bid raises many questions about how this bid was conducted. The conflict of interest questions, as well as whether any inappropriate conversations took place prior to and inside the Cone of Silence period are subjects that concern The *Superlative* Group, given all the facts at our disposal.

There is one other very key point that needs to be made in relation to the existing vendor's involvement in this RFP. The growing trend of municipal marketing and sponsorship has caused many City and County governments to first look to their beverage vending contract as an initial source of new revenue. San Diego, New York City, Oakland, California, Miami-Dade County, and many more are recent examples of tremendous new value being created for public sector entities through rigorous management of beverage vending/concession rights. Miami Beach's combination of vending and sponsorship rights would make this an obvious, early priority to bring in money as part of a municipal marketing program. In our conversations in August of 2003, the vendor stated that he did not think the beverage vending should be a priority, and that he had done the City a great service over the years through his contract. His statement goes against every trend in the industry. Further, these trends are well-known to a city official, a selection committee member, through his own research, and his discussions with Miami-Dade County officials regarding their beverage vending solicitation efforts. Rather than questioning the vendor's involvement. The city official proactively tried to get the vendor onto our bid, as did another city official.

We cannot help but consider that the vendor's vested interest in the existing contract (which he has enjoyed since 1983 according to his correspondence) is a material fact in this bid award process. If the City were to conduct a competitive bid the likely result is a less favorable outcome for the existing vendor's financial

Mr. Jorge M. Gonzalez
April 12, 2004
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interests and a more favorable outcome for the City's interests. He desired to bring several other firms controlled by him into the *Superlative* bid raises other important conflict-of-interest questions.

Our position on the matter of a partnership is further reflected in the attached correspondence we sent to the vendor on September 3, 2003. The vendor made our staff extremely uncomfortable with his desire to join our bid. We felt pressure to include him, and that pressure was exacerbated by the communications we received from city officials.

We want to learn whether the vendor had any conversations with any city executive during or immediately after the first award, and whether influence was brought to bear that caused the city to retract its award to *Superlative*, and re-award the contract to a bidder who agreed to join with him. The evidence submitted warrants such investigation.

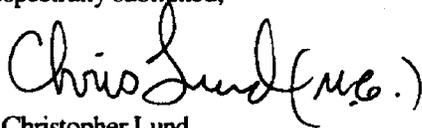
Based on the facts above, which we assert to be truthful to the best of our knowledge, we respectfully request that the City suspend the award until the matters of this protest are thoroughly and rigorously investigated.

We also respectfully request immediately under Florida open records law, copies of all bids, proposals and evaluation memoranda surrounding the first bid (which *Superlative* won) and the second bid. We also desire to learn at what point the vendor in question had discussions with City officials surrounding the bids, the nature of those discussions, and any memoranda, emails and other documents which shed light upon his involvement in the process. Further, we request documentation that the response time for protests on this RFP 66-02/03 is consistent with the response time given in other city bids. Such evidence could include documentation of response times given in the City's last 25 RFP's. We will pay customary copying and delivery costs incurred for such requests.

Finally, we were told by a city official on April 9, 2004 (after receiving the City's award notice and trying without success to reach the city manager) that the committee not only rejected our bid, they did not even evaluate it. This is curious given we had won a previous bid. It is with healthy and reasonable skepticism that we inquire about the vendor's influence over this entire process, and the overall criteria used to make the award.

We reserve all rights and remedies under law.

Respectfully submitted,

A handwritten signature in black ink that reads "Chris Lund (M.C.)". The signature is written in a cursive, flowing style.

L. Christopher Lund
Vice President Municipal Marketing

LCL/cal