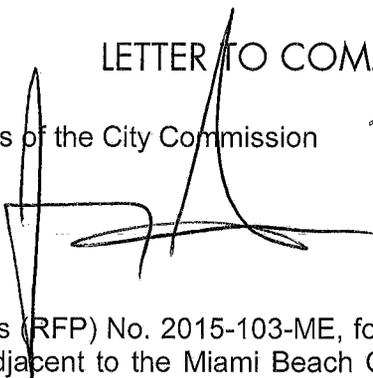


MIAMIBEACH

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission **159-2015**

FROM: Jimmy L. Morales, City Manager 

DATE: April 22, 2015

SUBJECT: Update on Request for Proposals (RFP) No. 2015-103-ME, for the development of a convention Headquarter hotel adjacent to the Miami Beach Convention Center (the RFP).

The purpose of this LTC is to provide an update regarding Request for Proposals (RFP) No. 2015-103-ME, which seeks proposals for the development of a convention headquarter hotel adjacent to the Miami Beach Convention Center.

On January 29, 2015, the City issued RFP 2015-103-ME, for the development of a convention headquarter hotel adjacent to the Miami Beach Convention Center (the RFP) with a proposal due date of April 11, 2015. The City received two (2) proposals in response to this RFP from Portman Holdings and Oxford Capital Group LLC.

The City has determined that the proposal received from Oxford Capital Group is non-responsive and on April 21, 2015, the City notified the firm that it will receive no further consideration. (Refer to letter attached). The response was written in conjunction with the City attorney's office.

If you have any questions, please do not hesitate to contact me at extension 6637.

cc: Rafael Granado, City Clerk
Maria Hernandez, Project Director, Convention Center District

Attachment: Letter to Oxford Captial

JLM/ME/AD

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MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov
PROCUREMENT MANAGEMENT DEPARTMENT
Tel: (305) 673-7490, Fax: (786) 394-4075

April 21, 2015

Mr. John Rutledge
President and CEO
Oxford Capital Group LLC
350 W. Hubbard, Suite 440
Chicago, IL 60654

Sent via U.S. Mail and Email to jwr@oxford-capital.com

RE: RFP No. 2015-103-ME for the Development of a Convention Headquarter Hotel Adjacent to the Miami Beach Convention Center ("RFP")

Dear Mr. Rutledge:

The City has carefully reviewed the proposal submitted by Oxford Capital Group LLC and RLB/Swerdling ("Oxford") in response to the RFP (the "Oxford Proposal"). For the reasons set forth herein, the City has concluded that the Oxford Proposal fails to comply with several material requirements of the RFP and is therefore non-responsive and disqualified from further consideration.

I. Background on the Pertinent RFP Requirements

One of the key components of the Hotel Project, as that term is defined in the RFP, is that the City shall not provide public funding or public financing for the Hotel Project. To this end, the RFP Instructions to Proposers makes clear:

The role of the public sector in the Hotel Project will be limited to the leasing of the Hotel Site at a market rate. ***The City shall not provide, nor should Proposers rely on, any public funding or public financing for the Hotel Project.***

See RFP Division 00100, Section 2 (emphasis supplied).

As a corollary to, and in furtherance of, the above parameters for the proposed development of the Hotel Project, the RFP outlines certain minimum Hotel Project requirements which all proposers must adhere to, including Section 4(f) of Division 00100 of the RFP, which provides:

The Developer shall be solely responsible for all costs and expenses associated with the development, design, construction, equipping, and installation of all furniture, fixtures, equipment and other improvements relating to the Hotel Project, its subsequent operation or use, and all alterations, repairs or replacements thereof.

(emphasis supplied).

The RFP specifically instructs proposers that their terms cannot conflict with the minimum Hotel Project requirements in Section 4 of Division 00100 and states:

In no event shall any of the Proposer's terms be inconsistent or in conflict with the Hotel Project minimum requirements and the Room Block minimum requirements set forth in Sections 4 and 5 of Division 00100 of the RFP; **the failure to adhere to such requirements shall render a Proposer non-responsive.**

(emphasis supplied). Indeed, the City highlighted the importance of the Section 4 minimum requirements in the RFP, by requiring the proposers to expressly acknowledge and agree in the Proposer Certification and Affidavit that "the failure to comply with and/or agree to the foregoing requirements referenced in Sections 4 and 5 . . . shall render Proposer non-responsive." See RFP Appendix A, Proposer Certification, Section 18.

In addition, the RFP includes a variety of Proposal Submission Requirements, to permit the City to evaluate each proposer's experience and qualifications; the design team's experience and qualifications; the proposed hotel program, concept design and preliminary development budget; the financing plan and proposed financial terms (i.e. rent); and other lease terms. See RFP Division 00400. With respect to the proposed financial terms, the RFP submission requirements call for proposed percentage rent in the form of a percentage of gross operating revenues, a schedule of annual fixed minimum rent payments by year for the term, and any other payments contemplated by the form of Lease issued during the RFP process. See Tab 6 to Division 00400 of the RFP.

II. The Oxford Proposal Fails to Adhere to the Hotel Project Minimum Requirements and Fails to Provide Financial Terms.

First, Oxford failed to adhere to the minimum Hotel Project requirements contained in Section 4, despite the RFP's clear instructions and Oxford's execution of the Proposer Certification acknowledging that the failure to comply with the minimum requirements of Section 4 shall render a proposer non-responsive,

In Tab 6 of the Oxford Proposal, Oxford represents that it "would require some financial subsidy . . . estimated to be approximately 5%-10% of the total development budget. This subsidy could be achieved through subsidized debt, an upfront payment, tax abatement, or other means." The Oxford Proposal also includes a table with a proposed "City Subsidy" in the amount of \$25 million, which Oxford indicates it would utilize for the development of the Hotel Project.

By requiring a financial subsidy from the City ranging from \$16 million to \$33 million, the Oxford Proposal fails to comply with the City's minimum Hotel Project requirement in Section 4(f) that "the developer shall be solely responsible for all costs and expenses associated with the development, design, construction . . . and other improvements related to the Hotel Project." This deviation from the RFP requirements is material and not acceptable as it (1) deprives the City of its assurance that the contract will be entered into in accordance with its specified requirements, and (2) undermines the common standard of competition served by the RFP process, as any number of other developers may have submitted a proposal in response to the RFP if the City had advertised that it was willing to contribute a substantial public subsidy for the Hotel Project. See *e.g.*, *Robinson Electric Co., Inc. v. Dade County, Florida*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982).

Second, the Oxford Proposal materially fails to conform to the RFP requirements because it fails to propose any percentage rent, fails to propose any schedule of annual fixed minimum payments by year for the term, and fails to propose any other financial terms whatsoever in response to the RFP, as called for in the Proposal Submission Requirements. Compare Tab 6 to Division 00400 of the RFP with Tab 6 of the Oxford Proposal. Rather than submit a price proposal for the City to evaluate consistent with the RFP, the Oxford Proposal merely states in Tab 6 that "depending on the final amount and format of [a City] subsidy, we would be happy to include a base + percentage rent

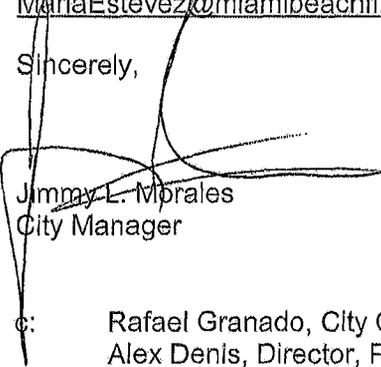
payment as outlined in the draft lease agreement.”

The failure to include basic financial terms such as rent and the schedule of minimum fixed rent is a substantial and material irregularity impacting the responsiveness of Oxford's proposal. To permit Oxford to proceed at this juncture without having submitted any price proposal whatsoever would effectively destroy the competitive character of the RFP process, as it would provide Oxford with an unfair advantage relative to a bidder that timely provided rent and other financial terms by the due date, as required by the RFP. See, e.g., *Harry Pepper & Assoc., Inc. v. City of Cape Coral, Fla.*, 352 So.2d 1190, 1193 (Fla. 2d DCA 1977).

Accordingly, based on the foregoing, the Oxford Proposal is non-responsive and not entitled to further consideration. Finally, in view of the City's conclusion above, the City notes that it need not address whether the Oxford Proposal satisfies any of the minimum qualifications requirements of the RFP, and therefore the City expressly reserves all rights with respect thereto.¹

Should you need additional information pertaining to matters of process or procedure, please feel free to contact Maria Estevez at (305) 673-7000 ext. 6558, or e-mail: MariaEstevez@miamibeachfl.gov.

Sincerely,



Jimmy L. Morales
City Manager

c: Rafael Granado, City Clerk
Alex Denis, Director, Procurement Management

¹ The City specifically reserves its rights to address such matters, as the City's initial research indicates that the qualifying projects identified in Tab 1 of the Oxford Proposal were publicly-financed projects that likely do not meet the requirements of Section 9(a) of Division 00100 of the RFP.