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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: February 3, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

Agenda Item No. 8(F)(15)

From: Carlos A. Gimenez
Mayor

Subject: Recommendation to Reject all Bids Received: Waste Carts, Recycling Carts, and Cart Parts

Resolution No. R-100-15

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the rejection of all bids received for *Bid No. FB-00080, Waste Carts, Recycling Carts, and Cart Parts.*

An Invitation to Bid (ITB) was issued under full and open competition to obtain waste carts, recycling carts, and cart parts used by Public Works and Waste Management to provide waste collection and disposal services to over one million County residents. The solicitation was to be awarded in two groups: Group 1 was to include award of a fixed pricing contract for purchase and delivery of plastic waste carts, recycling carts, and cart parts in various sizes; and Group 2 was to establish pre-qualified vendors eligible to participate in future spot market competitions for the purchase and delivery of various waste and recycling cart parts and tools, by manufacturer.

A total of eight (8) bids were tendered in response to the solicitation. Bid submittals received from three (3) of the firms were deemed non-responsive by the Office of the County Attorney due to the non-conformance of their offers to the requirements in the solicitation (Office of the County Attorney's responsiveness opinion is attached). Four (4) firms submitted courtesy responses indicating they do not provide the solicited items. One (1) firm submitted a "No Bid" due to the manufacturing criteria established in the solicitation.

A new solicitation will be issued with revised requirements to ensure the needs under Group 1 and Group 2 are met. The solicitation's requirements will also be reviewed to ensure as much competition as possible. Additionally, the County will structure the bid in conformance with US Communities Cooperative guidelines. The County, as the lead agency, will make the contract accessible to 55,000 government jurisdictions, non-profits, and educational institutions nationwide, of which approximately 40 to 45 percent of those agencies access one (1) or more US Communities Cooperative contracts each quarter. Staff is taking this action to reduce the cost of the carts to the County through the potential volume purchase by participating agencies.

Scope

The impact of this item would have been countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact of the total five-year contract term would have been $5,419,000.

Department	Allocation	Funding Source	Contract Manager
Public Works and Waste Management	$5,419,000	Proprietary Funds	Olga Espinosa- Anderson
Total	**$5,419,000**		

Track Record/Monitor
Lenny Sandoval of the Internal Services Department is the Procurement Contracting Officer.

Vendors Not Recommended for Award
An ITB was issued under full and open competition on May 21, 2014. Eight (8) bids were received in response to the solicitation.

Proposers	Reason for Not Recommending
Cascade Engineering, Inc.	Rejection of all bids
Otto Environmental Systems (NC), LLC	
Rehrig Pacific Company	
Toter, LLC	Submitted a "No Bid"
American Safety Utility Corp.	No Bid – Firms provided courtesy responses indicating they do not provide the solicited items
Myton Industries, Inc.	
Uline	
W.W. Grainger, Inc.	

Applicable Ordinances and Contract Measures
- The two (2) percent User Access Program provision was applicable.
- A Small Business Enterpirse Bid Preference and Local Preference were included in the solicitation.
- The Living Wage Ordinance did not apply.

Alina T. Hudak
Deputy Mayor

Memorandum

MIAMI-DADE COUNTY

Date: July 7, 2014

To: Lenny Sandoval
Procurement Contracting Manager

From: Suzanne Villano-Charif
Assistant County Attorney

Subject: Responsiveness of Bids- ITB FB-00080- Waste Carts, Recycling Carts, and Cart Parts- Multiple Vendors

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You have asked this office if bids from Cascade Cart Solutions ("Cascade"), Rehrig Pacific Company ("Rehrig"), and Otto Environmental Systems North America, Inc ("Otto") may be considered responsive to the above referenced Invitation to Bid ("ITB"). For the reasons stated below, the bids are all non-responsive.

FACTS

We rely on the information provided in your memorandum to this office dated June 26, 2014 (attached hereto), the solicitation, and the warranties for each of these vendors in rendering this opinion.

Pursuant to Section 2.8, the ITB provides that:

> The awarded bidder shall fully guarantee the performance of the carts and warrant carts against defects in materials and workmanship for a minimum period of ten (10) years on all carts after the date of acceptance of the product. This warranty shall be unconditional and non-prorated, providing Miami-Dade County with an assurance of full replacement.

Pursuant to Section 2.8 Subsection F the ITB specifies claim procedures:

> For carts that are subject to a warranty claim (Warrantable Carts), but repairable, the County may elect to conduct minor repairs and installation of replacement parts...The County reserves the right to negotiate a separate service contract for all services and repair of carts with a third-party. However, this action will in no way waive the warranty requirement of the carts.

You report that all respondents took exception to the warranty requirements. Each respondent submitted a warranty that excluded coverage in the event of unauthorized repairs or alterations.

DISCUSSION

Based on the above facts, the bids submitted by all respondents are non-responsive for offering warranty terms which do not conform to the solicitation's warranty terms. To be responsive, a bid must represent an unequivocal offer to provide the exact thing called for in the IFB, such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. *See Matter of: Bailey Controls Company; The Foxboro Company, B-256189, 94-1 CPD P 320 WL 221387 (Comp. Gen. May 23, 1994).* Warranty requirements are considered material, and therefore a bidder's exception to, or qualification of, an IFB's warranty provisions renders its bid nonresponsive. *See Matter of: Zoe B-244877, 91-2 CPD P 493, 1991 WL 261916 (Comp. Gen. Nov. 26, 1991).*

The materiality of exceptions to warranty provisions is particularly salient in this solicitation as the ITB expressly required that the "warranty shall be unconditional and non-prorated, providing Miami-Dade County with an assurance of full replacement." *See Solicitation FB-00080 Waste Carts, Recycling Carts, and Cart Parts, Page 9, Section 2.8 Cart Warranty Requirements, Subsection A-Carts.* The solicitation clearly asked for a price that was predicated on an unconditional full replacement warranty exercisable at the County's option. This request was a clear statement that any allocation of risk for defect or replacement of a purchased product must be at the sole expense of the vendor through the term of the contract. This allocation of risk implies a cost differential that cannot simply be waived in the ITB context. Any deviation from this material term would result in a bid on an essentially different product than what was required by the ITB and would thus be ineligible for award.

CASCADE:

Cascade took exception to the warranty requirements of the solicitation. In its bid, in a section titled "Cascade Cart Solutions Product Warranty," Cascade stated that "this warranty shall be voided by any alterations, modifications or unauthorized repairs to the product(s)." This warranty term conflicts with the warranty required by the solicitation, since the solicitation specified the County may elect to conduct minor repairs and installation or contract with a third party without waiving the warranty requirements. Additionally, Cascade's warranty provided that "Cascade shall, *at its option*, repair or replace such defective product(s) or part(s) thereof, or refund the cost of the product(s) *prorated* based on the number of months in services." The ITB, however, provided that the warranty "shall be non-prorated" and that the County's determination in contested claims shall be final. Thus, Cascade's bid is nonresponsive because the warranty terms it offered in its bid do not conform to the ITB warranty terms.

OTTO:

Otto took exception to the warranty requirements of the solicitation. In its bid, Otto submitted a "Ten Year, Non-Prorated Warranty," that excluded unauthorized repair or alteration from warranty coverage. This warranty term conflicts with the warranty required by the solicitation, since the solicitation specified the County may elect to conduct minor repairs and installation or contract with a third party without waiving the warranty requirements. Furthermore, the exclusive warranty remedy provision in Otto's warranty provides that "upon

determination of the containers/parts as defective by Otto, said products shall, at Otto's sole option, be repaired, replaced ..." However, the solicitation specifies procedures for complete replacement of a warrantable cart or component and provides that the County's determination in contested claims shall be final. Otto's bid is nonresponsive because the warranty terms it offered in its bid do not conform to the ITB warranty terms.

REHRIG:

Rehrig took exception to the warranty requirements of the solicitation. In its bid, Rehrig submitted a "Huskylite Roll Out Cart Warranty," that excluded unauthorized repair or alteration from warranty coverage. This warranty term conflicts with the warranty required by the solicitation, since the solicitation specified the County may elect to conduct minor repairs and installation or contract with a third party without waiving the warranty requirements. Furthermore, in its warranty Rehrig "reserved the right to either replace or repair the defective component....and the determination of alleged failure shall be made jointly in the judgment of the buyer and manufacturer." However, the solicitation specifies procedures for complete replacement of a warrantable cart or component and provides that the County's determination in contested claims shall be final. Rehrig's bid is nonresponsive because the warranty terms it offered in its bid do not conform to the ITB warranty terms.

Accordingly, the bids from Cascade, Otto and Rehrig are non-responsive. In light of the fact that all vendors submitting proposals for this ITB are non responsive, the County, as always, has the right to reject all bids and re-procure these products through a revised solicitation calculated to obtain the greatest number of responsive proposals by more effectively communicating the warranty requirement to potential proposers or amending the warranty requirements to better reflect the standard practice in the marketplace.

Suzanne Villano-Charif

MEMORANDUM
(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: February 3, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(F)(15)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(15)
2-3-15

RESOLUTION NO. R-100-15

RESOLUTION APPROVING REJECTION OF BIDS RECEIVED IN RESPONSE TO BID NO. FB-00080 FOR WASTE CARTS, RECYCLING CARTS AND CART PARTS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves rejection of bids received in response to BID No. FB-00080 for Waste Carts, Recycling Carts and Cart Parts.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Esteban L. Bovo, Jr.** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman **aye**
Esteban L. Bovo, Jr., Vice Chairman **aye**

Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**absent**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of February, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Hugo Benitez