

Memorandum



Date: September 4, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager 

Subject: Recommendation to Reject all Proposals, and Follow Revised Process for the Miami International Airport (MIA) Mover Automated People Mover (APM) System.
Project No. RFP-MDAD-04-04/J104A

Agenda Item No. 8(A)(1)(A)

Recommendation

I recommend that the Board: (a) reject all proposals received in response to Request for Proposals for Project No. RFP-MDAD-04-04/J104A (MIA Mover APM System); (b) waive competitive bidding in connection with the rejection of proposals pursuant to Section 2-8.1 (b) of the County Code and Section 5.03(D) of the Home Rule Charter and (c) approve a bid waiver under Florida Statutes 255.20 (1) (c) to authorize the structured negotiations described below to determine the firm which offers the best value to the County in the delivery of the design, construction, operations and maintenance services which are the object of the solicitation.

This recommendation constitutes a rejection of the recommendation of the Negotiation Committee, which recommended a rejection of all proposals, waiver of competitive bids, continuation of negotiations with Parsons Odebrecht Joint Venture (POJV) and in the event no agreement was reached with POJV, the commencement of simultaneous negotiations with the other two firms. However, in light of the evaluation of all 3 proposers as either non-responsive or non-compliant, and after consideration of the substantial difference in the proposed price from the budgeted estimate, I am recommending a best-value approach to the procurement as being in the best interest of the County.

Scope

Miami International Airport (MIA) is located primarily within Commission District Six. However, the impact of this agenda item is countywide in nature as Miami International Airport is a regional asset.

The scope of this project consists of the design, construction, operation and maintenance of an elevated landside automated people mover system. The system will provide a convenient and reliable means for transporting passengers between MIA and the Miami Intermodal Center (MIC) which includes the Consolidated Rental Car Facility (RCF) and is currently under construction by the Florida Department of Transportation (FDOT). The MIA Mover is a critical link between MIA and the MIC which makes the MIC economically viable. With the MIA Mover in place, MIA will be able to improve air quality to meet the requirements of the Federal Clean Air Act by the reduction in the number of vehicles on the MIA access roads.

Track Record/Monitor

Not applicable as this is a rejection of all proposals. The Miami-Dade Aviation Department (MDAD) Project Manager is Franklin Stirrup.

Fiscal Impact/Funding Source

This project is funded by the MIA Capital Improvement Program and FDOT with the following:

Capital Project: MDAD's project budget was established at \$221 million for Phase I (design and construction) based on project estimates performed in 2004 and this amount is to be funded by

Airport Revenue Bonds. Prior to the opening of the Price Proposal in May 2006, the Engineer's estimate was updated to reflect current market conditions. Including post-Katrina demands and hyperinflation, and this estimate was established at approximately \$265 million. The MDAD project budget, however, remains at \$221 million.

Operations and Maintenance (O&M): Phase II has an estimated value of \$66.5 million over a 15-year period. The MDAD Operating Maintenance Budget funds this amount. The rental car companies which will be located in the RCF will contribute 50% of the annual O&M costs for the first five (5) years through the collection of Customer Facility Charges (CFC). Thereafter, this cost will be proportional to the rental car ridership on the APM system.

Background

The Request for Proposals (RFP)

The RFP for the MIA Mover was advertised in December 2004 with a proposal due date of March 2005 which was, at the request of the proposers, later extended to February 2006 due to the numerous addenda to the RFP issued to address the questions and concerns of the proposers. The RFP called for the delivery of a turnkey solution consisting of one proposal to design, build, operate and maintain the MIA Mover. The integrated solution was chosen to reduce capital costs, provide for faster completion, provide greater contractor accountability, and reduce potential for delays. The approach was endorsed by an airport peer review group consisting of representatives from major national airports.

To promote competition, the RFP documents allowed for different technologies to be proposed. The final rankings were to be based on best value, combining technical merit and pricing.

Phase I (the Capital Project) included the design, construction, manufacture, supply, installation, testing and commissioning of the fixed facilities (MIA Station, guideways, maintenance and storage facility, air conditioned pedestrian corridors with moving walkways connecting the MIA Station to the MIA Terminal, etc.) and the operating system of the MIA Mover APM System, except for certain facilities to be provided by the FDOT under the MIC Program. The time for performance to complete Phase I (Capital Project) of the MIA Mover was 3 years from the effective date of the Notice-to-Proceed. Phase II of the contract is the Operations and Maintenance of the Operating System for an initial five (5) year period, with Owner options to extend it in two, five year periods for an additional ten (10) years. At any time, the Owner can terminate any portion of Phase II (the Operations and Maintenance phase) for convenience and require the Contractor to train Owner designed personnel to take responsibility of the Operations and Maintenance of the System.

The RFP submissions included:

- A proposal guarantee
- CSBE Envelope containing only the CSBE Schedule of intent affidavit(s) (CSBE Participation Goal 11.54% for Phase I)
- CBE Envelope containing only the CBE Schedule of Participation and CBE Letters of Intent (CBE Participation Goal 1.52% for Phase I)
- A Technical Proposal addressing proposed designs, operating system technology, management, qualifications and the operations and maintenance approach, to comply with the Contract requirements, including future expansion opportunities
- A Lump Sum Pricing Proposal commensurate with the Technical Proposal, including for the Phase I Capital Project, the Phase II Operations and Maintenance for the maximum anticipated

15 years of Operations and Maintenance and the potential future expansion of the System (as an Owner option).

The Responses and their Evaluation

Three proposals were received on the due date of February 22, 2006 including self-propelled and cable propelled technologies. The three proposers were Bombardier-PCL, LLC (utilizing Bombardier's self-propelled Innovia technology), Parsons Odebrecht Joint Venture (utilizing Mitsubishi Heavy Industry's self-propelled CrystalMover technology) and Slattery Skanska, Inc. (utilizing Doppelmayer's cable-propelled technology).

Slattery Skanska's proposal omitted the schedule of participation required to determine the proposer's compliance with the County's CBE Program. The balance of the package submitted did not provide the requisite commitment by Slattery Skanska to enter into written subconsultant agreements with identified firms for work in specified professional services representing particular percentages of the work. Accordingly, on March 13, 2006, Slattery Skanska was determined to be not responsive to the RFP and therefore an evaluation was never performed on its Technical Proposal (See March 13, 2006 Memorandum Exhibit A).

The Technical Proposal by Bombardier-PCL, LLC was evaluated and contained a series of material irregularities including failure to provide a proposal guarantee meeting the requirements of the RFP. On May 9, 2006, Bombardier-PCL was determined to be not responsive to the RFP (See May 9, 2006 Memorandum Exhibit B).

The Technical Proposal by Parsons Odebrecht Joint Venture (POJV) was evaluated and deemed to comply with the RFP. At its May 10, 2006 public meeting, the selection committee proceeded to evaluate POJV's technical proposal, assigned technical scores in accordance with the RFP, and opened POJV's Price Proposal. The remaining pricing proposals remained sealed as the other two proposers had been deemed not responsive.

The price offered by POJV at \$286,943,467.00 was substantially higher than the County's budget for the project which was established at \$221 million for Phase I (design and construction). Prior to the opening of proposals in May 2006, the Engineer's estimate was updated to \$265 million to reflect current market conditions but MDAD's budgeted funding remained at \$221 million. A negotiation committee was constituted on July 21, 2006 to attempt to negotiate a contract with POJV as the sole remaining responsive proposer.

POJV's proposal guarantee was due to expire on August 22, 2006, one hundred and eighty (180) days following the deadline for submission of the proposals. At the request of the County, POJV extended its proposal guarantee, but subjected the extension to additional material conditions not contemplated within the original RFP, namely that the project commence by a date certain and that the sureties were able to honor their commitments at the time the project was commenced. Because the proposal guarantee offered by POJV in response to the County's request for an extension contained material qualifications, POJV's response was deemed not further compliant with the requirements of the RFP. (See September 15, 2006 Memorandum Exhibit C).

Following that determination, on or about February 8, 2007, the Negotiation Committee met a final time and recommended to the County Manager to reject all proposals, to waive competitive bids, to continue negotiations with POJV, and, in the event no agreement was reached with POJV, to commence simultaneous negotiations with the other two firms. (See March 7, 2007 Memorandum Exhibit D).

Other considerations

Other factors affect my recommendation to reject the recommendation of the Negotiation Committee as set forth in this memorandum. The chief advantage to pursuing the current Committee recommendation would be in the interest of expediting the project; however, FDOT's construction of the MIC and its critical car rental facility has been substantially delayed. The bids received by FDOT for the construction were significantly over budget, giving rise to protracted negotiations. As a result, while the car rental facility was originally projected to be complete on August, 2008, its current projected opening date, dependent on a number of contingencies, is now January, 2010. The completion of that facility is, of course, critical to the MIA Mover because the purpose of the mover is to connect the completed facility to the airport. As a result, the delay experienced to date in the County's process, while substantial, has not affected the ultimate use as the MIA Mover operation is to come on line approximately 2 years after the completion of the RCF. If the Board approves this recommendation, it is anticipated that negotiations could commence within 60 days during which time all proposers would be brought to the same level of technical review. Notice to Proceed (NTP) could be given by early next year, with design and construction having an approximate 3 year duration.

Further, price considerations are a substantial factor in light of recent CIP cost increases. At this point, all 3 proposers have been deemed either non-responsive or non-compliant, narrowing the County's options and ability to engage in a best value procurement. As noted above, the RFP allowed for different technologies to be proposed to promote competition, yet the determinations on responsiveness and compliance have prevented the Committee from making a true assessment of all of the technologies in the marketplace. Putting all 3 proposers back into the process for a complete review with further evaluation and negotiation is more likely to result in a more technically sound and competitively priced project for the County. Considering the current project budget, it is in the County's best interest to negotiate with all 3 proposers to obtain the best value.

Beyond that, during this protracted process, the County has continued to conduct business in other matters with at least two of the firms involved in this solicitation, POJV and Bombardier. POJV is the contractor in the construction of South Terminal, currently scheduled to open in August, 2007 and is the contractor for the North Terminal Development. Bombardier is providing maintenance services on the Concourse E/Satellite-E APM System. The ultimate evaluation of the responsibility and technical qualifications of these firms should in my judgment take into account the recent experiences of MDAD in dealing with these two firms.

In addition, the Florida Statutes 255.20 (1) (c) allow, under specific circumstances, governing boards of local governments with established procedures for the waiver of competitive selection, to award construction contracts having an estimated cost exceeding \$200,000 through a process other than competitive selection and when the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent (subparagraph 7); and subsection 10 (b) (II) In the event the project is to be awarded by any method other than a competitive selection process, the governing board must find evidence that: The time to competitively award the project will materially increase the cost of the project. Delays in the project will result in an increase in the project cost resulting from inflation of materials and labor (6% annually), as well as \$16M per year to operate a consolidated bussing operation until the APM is on-line.

Proposed Process

To solicit the required design, construction, operation, maintenance and services, I would recommend that all responses be rejected, competitive bids be waived and the following methodology be followed:

Y

1. I recommend that we negotiate with all of the respondents to the RFP who comply with the requirements of the structured negotiation which is described in this memorandum. The three respondents have gone through considerable time and expense in responding to the RFP, and participating in the County process. In any event, the three respondents represent the range of technology available to meet the required needs. Contemporaneous negotiations would foster competition and obtain the best value to Miami-Dade County.
2. The County would open the price proposals of all respondents wishing to be considered for award. This would eliminate any advantage enjoyed by those proposers whose prices were not opened because of their disqualification early in the process.
3. MDAD would update critical information relating to the Project, including stating a new series of assumptions relating to commencement and completion dates for the construction.
4. The Committee would allow the proposers to address the technical irregularities in the proposals which are deemed material and detrimental to the County's assurances of having the contract executed and performed in accordance with its terms. This would include the posting of a new proposal guarantee consistent with the requirements of the RFP.
5. The Committee would then enter into negotiations concurrently with all proposers who are deemed responsible and technically qualified. The negotiations may result in rescoping the project as necessary to bring the project within budget.
6. Following those negotiations, the Committee would recommend the negotiated contract which in the Committee's opinion represents the best value of Miami-Dade County. In making that determination, the Committee would be guided by the selection criteria set forth in the RFP, would attempt to establish a common negotiated scope amongst the proposers (if project re-scope is necessary). At all times the Committee would be guided by the selection criteria set forth in the RFP but would not be bound by any mechanical application of the point system set forth therein, as different proposers may have recommended different project scopes which would be impossible to compare.
7. I would forward the resulting recommendation for approval by the Board not later than early next year.

This process preserves competition between different proposers consistent with obtaining the best value for Miami-Dade County. It also provides the flexibility necessary to address changes in the project which may be required to meet budget constraints and to account for the airport's ongoing experience with these proposers.


Assistant County Manager

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MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: September 4, 2007

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

SUBJECT: Agenda Item No. 8(A)(1)(A)

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor

Agenda Item No. 8(A)(1)(A)

Veto _____

09-04-07

Override _____

RESOLUTION NO. _____

RESOLUTION REGARDING MIA MOVER AUTOMATED PEOPLE MOVER (“APM”) SYSTEM, PROJECT NO. RFP-MDAD-04-04/J104A AT MIAMI INTERNATIONAL AIRPORT, REJECTING ALL PROPOSALS, WAIVING COMPETITIVE BIDDING, AUTHORIZING NEGOTIATIONS WITH PARSONS ODEBRECHT, JOINT VENTURE, WITH BOMBARDIER-PCL, LLC AND WITH SLATTERY SKANSKA, INC., AND DIRECTING MAYOR OR DESIGNEE TO RECOMMEND A CONTRACT WITH ONE OF THEM TO THIS BOARD

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby (1) rejects all proposals for the MIA Mover Automated People Mover (“APM”) System, Project No. RFP-MDAD-04-04/J104A; (2) waives formal competitive bidding by a two-thirds vote of those present pursuant to Section 5.03D of the Charter and in accordance with Section 255.20 Fla. Stat. in accordance with the attached memorandum; (3) authorizes the Mayor or his designee to negotiate with Parsons-Odebrecht, Joint Venture, with Bombardier-PCL, LLC and with Slattery Skanska, Inc. to achieve a proposed contract with one of these entities in the best interests of the County, and to recommend award of that contract to this Board in accordance with the process described in the attached memorandum.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of September, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Deborah Bovarnick Mastin

EXHIBIT A
MARCH 13, 2006 MEMORANDUM

Memorandum



To: Marsha E. Jackman
Director
Department of Business Development

Date: 13 March 2006

From: John McInnis
Assistant County Attorney

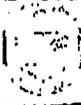
Subject: RFP MDAD J104A
MIA Mover

This office has been asked whether a bid submitted by Slattery Skanska, Inc., in connection with the above-described design-build project, is "responsive" within the meaning of Miami-Dade County's community business enterprise ordinance for architectural, landscape architectural, engineering, and surveying and mapping professional services ("CBE A/E program"), §§2-10.4.01, *et seq.*, Code of Miami-Dade County. The Board of County Commissioners has established a 1.5% CBE A/E subconsultant goal for this project, as well as a 5.4% community small business enterprise ("CSBE") subcontractor goal.

The CBE A/E program, including the ordinance, Administrative Order 3-32 ("AO 3-32"), and participation provisions promulgated thereunder, requires all respondents to submit a schedule of participation at the time of proposal submission identifying all CBE A/Es to be utilized to meet a CBE A/E goal, the professional service designation of the work each CBE A/E firm is to perform, and the percentage of such work. As provided in the A.O. 3-32 and the participation provisions, the schedule of participation constitutes a written representation by the respondent that, to the best of the respondent's knowledge, the CBE A/Es listed are qualified and available to perform as specified. The schedule of participation is a commitment by the respondent that, if awarded the agreement, it will enter into written subconsultant or subcontractor agreements with the identified CBE A/Es for professional services at the percentages set forth in the schedule of participation. *See* A.O. 3-32, IX (Agreement Administration - Subconsultant Goals); CBE Participation Provisions, § E (2) (a) (i).

The aviation department submitted for review a bid by Slattery Skanska, Inc. ("Slattery Skanska"). Slattery Skanska's bid package omitted the schedule of participation form and required information could not be gleaned from an exhaustive review of the submittal. Slattery Skanska's bid package included a table of organization, a breakdown of proposed team personnel, and 6 signed letters of intent from CBE A/E firms. Absent from Slattery Skanska's bid is documentation equivalent to a commitment that, if awarded the contract, Slattery Skanska would enter into written subconsultant agreements with the identified CBE A/Es for designated professional services representing specific percentages of work. The letter of transmittal, while signed by Slattery Skanska's executive vice president, does not identify the CBE A/Es to be utilized to meet the goal, the professional service designations of participating CBE A/E firms, or show the percentages of work such firms would perform. The table of organization is unsigned, does not identify the professional service designations of the firms listed, and does not provide the percentages of work to be performed. The letters of intent, each signed by an identified CBE A/E firm, are unsigned by Slattery Skanska. Nothing in the bid package provides the required assurance of a commitment by Slattery Skanska to enter into written subconsultant agreements with identified firms for work in specified professional services representing particular percentages of work. Based on the foregoing, it is the determination of this office that Slattery Skanska's bid is non-responsive.

EXHIBIT B
MAY 9, 2006 MEMORANDUM

**MEMORANDUM**

107.07-17A METRO-PAPERLESS MAIL MOT

TO: Margaret Hawkins-Moss
MDAD Contract Officer

DATE: May 9, 2006

FROM: *Deborah Bovarnick Mastin*
Deborah Bovarnick Mastin
Assistant County Attorney

SUBJECT:

Responsiveness to MIA Mover
APM System RFP No. MDAD-
04-04 MDAD Project No. J104A

QUESTIONS

In your memorandum of April 19, 2006, you have asked whether Bombardier-PLC, LLC, is a responsive proposer to the above captioned Request for Proposals ("The Proposer"). You have identified four items for this office to address. I will respond to each item separately.

CONCLUSION

The Proposer is non-responsive because it and its first tier subcontractors fail to hold the certifications required by the solicitation document, because the proposal guaranty bond submitted does not meet the requirements of the solicitation documents, and because the Proposer improperly qualified its proposal response and its proposal guaranty. Not only is the proposal guaranty conditional, but without a further consent of the Proposer, it is not enforceable by the County. Additionally, there is a question about whether the Proposer holds any valid certification issued by the Construction Industry Licensing Board of the Florida Department of Professional Regulation. Failure to satisfy any one of these four items would be sufficient to prevent the Proposer from being evaluated any further for this project. Its proposal is not eligible for consideration for award.

BACKGROUND

With its MIA Mover APM System MDAD Project No. J104A, the County seeks a proposer to offer a turnkey system for a Design-Build-Operate-Maintain contract. The project includes design, construction, procurement, fabrication, installation and maintenance of an electric rail system to bring passengers from the Miami Intermodal Center presently under construction by the State of Florida across LeJeune Road from Miami International Airport to the Terminal Building at the airport. In the fifteen months prior to the bid due date, the County issued more than twenty separate addenda, each of which modified the requirements of the bid solicitation documents in response to hundreds of questions posed by the proposers. The technical and qualifications portion of three proposals were opened on February 22, 2006. Price envelopes were also received at that time, but have not yet been opened. Another proposer has separately been found non-responsive for failure to comply with the CBE requirements of the solicitation

documents. As a result of this opinion, only one proposer remains in competition. This opinion does not address the responsiveness of that remaining proposer.

ANALYSIS

Section 5.3 of the Instructions to Proposers (ITP), identifies three responsiveness issues in this solicitation: (i) that the proposer hold the appropriate certifications and licenses required by Section 3.16 ITP of the solicitation, (ii) that the proposer furnish a Proposal Guaranty compliant with Section 3.5 ITP, and (iii) that the proposer comply with the CBE and CSBE participation requirements of the solicitation. The Department of Business Development has previously determined that this Proposer is compliant with the CBE and CSBE provisions of the RFP.

Technical Certifications

Section 3.1(3) ITP requires a proposer or its first tier subcontractors to hold sixteen specified different technical certifications. Section 6.0 Part 5 ITP specifically identifies those required certifications and licenses as "Responsiveness Criteria".

The Proposal indicates that all work to be awarded to the Proposer will be subcontracted to either PCL Civil Constructors, Inc. or to Bombardier Transportation (Holdings) USA, Inc., making those two corporations the only first tier subcontractors. The Proposal also indicates that neither first tier subcontractor nor the Proposer holds any of the required technical certifications. Thus, this Proposer is non-responsive.

Proposal Guarantee

In order to be found responsive, Section 3.5 ITP Proposal Guaranty requires a proposer to furnish a single bond on the form attached to the solicitation documents "executed by the proposer as Principal". The required Proposal Bond form binds the Principal to the County in a single bond with a penal sum of fourteen million dollars (\$14,000,000).

The Proposer failed to submit a Proposal Guaranty bond as required by the solicitation documents. Instead, its first tier subcontractors each submitted a proposal guaranty bond on a form it modified to state that the Principal is bound to the Proposer (not the County) and that the "Principal has submitted the attached *Bid and Letter of Qualification*" (emphasis added) along with a "Dual Obligee Rider" in favor of Miami-Dade County as a Named Obligee, and further states "There shall be no liability on the part of the Principal or Surety under this bond to the Obligees... unless the Obligees accept their respective proposals by PCL Civil Constructors, Inc. to Bombardier-PCL, LLC and Bombardier-PCL

LLC's proposal, as modified by its Letter of Qualifications". The two proposal guaranty bonds are in the separate amounts of four million dollars and ten million dollars respectively.

The solicitation documents were unambiguous and consistent in their requirements with regard to the certification requirements of proposers that may have chosen to organize themselves as an LLC.¹ The failure to furnish a proposal guaranty bond that complies with the solicitation terms renders the solicitation non-responsive. Section 2.5 (K) ITP states that a proposal "not accompanied by the Proposal Guaranty" shall be rejected.

¹ During the solicitation process two questions were posed to the County that are relevant to this situation. Answers to the questions were furnished to all proposers on February 10, 2006 as follows:

No.	Reference in Bid Documents	Questions
81	Vol. I, ITP 6.0	<i>If the proposer is a Limited Liability Corporation (LLC), does the use of the financial qualifications and experience of the member companies of the LLC satisfy the requirements of ITP 6.0 subpart 5?</i>

RESPONSE: *Proposers who are limited liability corporations may follow the financial disclosure requirements for joint ventures, in Appendix 4 of the Instructions to Proposers, for each member of the corporation. For all other purposes in connection with this solicitation, including but not limited to, certification, registration, licensure, bonding and local preference requirements, limited liability corporations will be treated like any other corporation.*

* * * *

207	Page ITP 16; Response to Request for Clarification#81	<i>Owner requires joint venture entities, including LLCs, to qualify as separate distinct entities for purposes of certifications, registrations, licenses, bonding and local preference requirements. Contractor requests that Owner allow joint venture or LLC proposers to bid in the name of the entity they have formed but submit qualifications and satisfy the requirements of the State of Florida Department of Professional Regulation up to the time of bid evaluation.</i>
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RESPONSE: *No, No Change to RFP Documents.*

Letter of Qualification

The Proposer submitted its proposal with a "Letter of Qualification". That letter includes several exceptions that vary from the requirements of the solicitation documents. These exceptions include: (i) "Securities" - The Proposer will not furnish any bonds to County as required by the solicitation documents. Instead, its two first tier subcontractors will each furnish bonds for their respective portions of the work with the County named as a dual obligee on the bonds; neither subcontractor will be responsible for the work of the other; (ii) "Reliability down-time events" - The Proposer rejects the requirements in the solicitation documents that Reliability Down Time Events will be a condition of substantial completion and Final Acceptance; (iii) "Operations and Maintenance" - The Proposer states that the allowance account in the solicitation documents will "take into account" payment from a deductible or self-insured retention, and that this amount is not part of its price proposal; (iv) "Insurance" - The Proposer rejects the requirement in the solicitation documents that insurance claims must be resolved within 90 days; (v) "Retainage" - The Proposer rejects the terms of the solicitation documents with regard to the amount of retainage to be withheld.

Each of these qualifications would offer the Proposer an economic advantage not enjoyed by other proposers that responded to the solicitation, and accordingly renders the Proposal non-responsive.

Appropriate certifications and licenses

The Proposer furnished as evidence of its qualifications as a certified contractor a letter from the State of Florida Department of Business and Professional Regulation Construction Industry Licensing Board, which confirms that the Proposer is eligible to bid under Rule 61G4-15.0022 F.A.C. as a joint venture.

As the Proposer is not organized as a joint venture, this office has asked the Department to confirm that as of the due date of the proposals, the Proposer was indeed eligible to bid under the rules of the Construction Industry Licensing Board;

EXHIBIT C
SEPTEMBER 15, 2006 MEMORANDUM

Memorandum

MIAMI-DADE
COUNTY

Date: September 15, 2006

To: Margaret Hawkins Moss
Aviation Sr. Procurement Contract Officer

From: Deborah Bovarnick Mastin
Assistant County Attorney
County Attorney's Office

Subject: Legal Opinion
MIA Mover APM System RFP
RFP No. MDAD-04-04/J104A

06 SEP 19 AM 8:54

You have asked whether the submission by the proposer Parsons Odebrecht Joint Venture of a proposal guaranty bond extension that is subject to a condition renders the proposer non-responsive.

Yes. By extending its proposal guaranty bond for 90 days on the condition that the County issue a notice to proceed for the project on or before January, 2007, the proposal is no longer responsive to the RFP. This office understands the circumstances leading to your question as follows:

The RFP does not provide a date certain by which a notice to proceed must be issued. It does provide that upon award of this contract, the successful proposer has a certain number of days in which to supply the County with a performance and payment bond and with proof of the required insurance. The RFP further provides that notice to proceed will not be issued to the proposer until after these requirements had been met, and that failure to meet these requirements will be grounds for vitiating the award and calling the Proposal guaranty.

Proposals on this project were opened on February 22, 2006. At that time, POJV submitted a proposal guaranty that staff found compliant with the RFP. The guaranty furnished by POJV was, as required, effective for 180 days. As the guaranty neared expiration, and no recommendation concerning award had been resolved, the County requested that POJV extend its proposal guaranty for an additional period of time. In response to that request, POJV furnished a letter from its sureties expressly stating that the guaranty was being extended on the condition that the County issue a notice to proceed prior to a specified date.

Accordingly, POJV's proposal has become non-responsive to the request as solicited; a bid waiver would be required in order to award to this proposer.

This opinion assumes that an award would be recommended to the Board of County Commissioners on the terms submitted by the proposer. If the County Manager determines that it would be in the County's interest to recommend an award on materially different terms, conditions or scope than those in the proposal submission, a bid waiver would be required separate and apart from the considerations discussed in this opinion.

EXHIBIT D
MARCH 7, 2007 MEMORANDUM

Date: March 7, 2007

Memorandum



To: George M. Burgess
County Manager

From: Margaret Hawkins Moss
Contracting Officer
Aviation Department

A handwritten signature in black ink that reads "Margaret Hawkins Moss".

Subject: Negotiation Committee Report-MDAD
RFP for MIA Mover Automated People Mover (APM) System,
Project No. RFP-MDAD-04-04

As authorized by Administrative Order 3-38 and the County Manager's memorandum dated July 21, 2006, the appointment of Negotiation Committee ("Committee") met and conducted the negotiation process for the subject services on August 22, 2006, August 23, 2006, August 24, 2006, September 15, 2006, and February 8, 2007. This process was conducted in accordance with the procedures specified by the Request for Proposals (RFP), as described in the attached summary minutes of those meetings.

RECOMMENDATION

It is recommended that the Board of County Commissioners (1) reject all proposals for the MIA Mover Automated People Mover ("APM") System, Project No. RFP-MDAD-04-04/J104A, (2) Continue negotiations with POJV, and in the event that we do not reach accord with POJV, then open negotiations with the other two (2) firms at the same time and move through the same process viz. technical evaluation, scoring, opening financial proposals and ranking. Upon successful completion of negotiations, I will make a recommendation to the Board to award a contract to the firm that has agreed to the most favorable terms for the County.

NEGOTIATION COMMITTEE MEETING OF AUGUST 22, 2006

MDAD and the non-voting Technical Advisor, on the Estimate of the Probable Cost, provided the Negotiation Committee with a briefing, and the MDAD established budget for the project. Apparent discrepancies in the POJV Schedule B of the Pricing Form were discussed and corrected. POJV provided an overview of their price proposal and a comparison with the Estimate of Probable Cost. Negotiation Committee noted that there was a "gap" between the budget and the estimate of probable cost, and that the aim was to bridge the gap between the budget and the proposal. Discussions on cost areas took place, including cost of insurance and bonds. Discussions on the Phase II (Operations and Maintenance) costs took place in comparison with the annual labor estimate prepared by MDT. Additional discussion items included compatibility between the NT APM System and the proposed MIA Mover APM system, compliance with the Qualified Management Contracts requirements for Phase II, and upcoming meeting schedules.

NEGOTIATION COMMITTEE MEETING OF AUGUST 23, 2006

The Negotiation Committee was briefed by MDAD and the non-voting Technical Advisors, on the "macro level" analysis of the proposed MIA Mover operating system price proposal in comparison to the NT APM System. POJV provided a briefing on the MIA Mover compatibility to the NT APM System. It was confirmed that there is spare parts and maintenance compatibility between the two systems, and that project schedules and other logistical design considerations (train lengths, 2-car vehicle versus 3-car vehicles, sterile passenger Negotiation

segregation, etc.) introduce challenges to the issue of interchangeability of the NT APM cars and the MIA Mover cars for operational purposes. Discussions were held about opportunities for reducing the proposal prices and these would be continued at the next meeting.

NEGOTIATION COMMITTEE MEETING OF AUGUST 24, 2006

Discussions were held on potential scope reductions that would reduce the proposal prices. Steps leading to Contract Award (with anticipated schedule) were discussed. Discussions were held on the need for POJV to further extend their proposal guaranty, beyond the November 22, 2006 date. POJV requested that the negotiations move forward with a goal on expeditious award, and based on actual progress the issue would be revisited. Options related to insurance cost reductions were discussed with MDAD Risk Management input. For the purpose of continued negotiations, the costs of bonds and insurance were isolated. The Negotiations Committee developed and put forward an offer for consideration by POJV, who expressed concerns and it was agreed that both parties required time for further consideration.

NEGOTIATION COMMITTEE MEETING OF SEPTEMBER 15, 2006

The Negotiation Committee was advised on the pending legal opinion on the issue of responsiveness as related to POJV's condition for extending the Proposal Guaranty and price guarantees. Negotiation Committee also introduced and discussed the issue that recently received bids on the FDOT MIC Rental Car Facility were substantially higher than the budget. FDOT was in process of analyzing the bids, and available options and that a delay to the MIC program was imminent; with the extent of delay being unknown. POJV offered potential solutions to help mitigate the schedule issues and not delay the MIA Mover project or create impacts on the MIC. Negotiation Committee voted to postpone the negotiations at this time. POJV addressed the Committee and expressed their willingness to help mitigate MIC project schedule issues if the MIC project is delayed without delaying the issuance of the MIA Mover NTP.

NEGOTIATION COMMITTEE MEETING OF FEBRUARY 8, 2007

The Negotiation Committee was advised on the County Attorney memoranda of September 15, 2006 and February 7, 2007; status of the Metrorail extension to the Airport (to replace the MIA Mover); and status of the FDOT MIC Rental Car Facility program. Negotiation Committee invited public comments from representatives of the three (3) proposers (who each made comments), and from the public. Negotiation Committee, in due consideration of the information presented, discussed various options/alternatives and their relative merit in the "best interests of the County", and then unanimously passed a motion to "Recommend to the County Manager to reject all proposals, continue negotiations with POJV, and in the event that we do not reach accord with POJV, then open negotiations with the other two (2) firms at the same time and move through the same process viz. technical evaluation, scoring, opening financial proposals and ranking."

Committee Report for
MIA Mover Automated People
Mover (APM) System
Project No. RFP-MDAD-04-04/J104A
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Attached are the following items to substantiate the Committee's actions to date:

Summary Minutes of Negotiation Meeting of August 22, 2006
Summary Minutes of Negotiation Meeting of August 23, 2006
Summary Minutes of Negotiation Meeting of August 24, 2006
Summary Minutes of Negotiation Meeting of September 15, 2006
Summary Minutes of Negotiation Meeting of February 8, 2007

c: Clerk of the Board of County Commissioners

NEGOTIATION COMMITTEE

John W. Cospers, MDAD, Chairperson
Max Fajardo, MDAD
Jose Diaz, HNTB
Javier Rodriguez, FDOT

TECHNICAL ADVISORS (NON-VOTING)

Genaro (Steve) Alvarez, MDT
Sanjeev N. Shah, Lea + Elliott

CONTRACTING OFFICER

Margaret Hawkins Moss, MDAD

STAFF

Franklin Stirrup, MDAD