Memorandum

MIAMI-DADE COUNTY

Date: April 16, 2008

Supplement #2 to Agenda Item No. 3(D)

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

From: George M. Burgess
County Manager

Subject: Supplemental Information: Protest Regarding Recommendation for Approval to Award Contract No. 8481-2/22: Automated Fare Collection System for Transit Department

---

The information presented in this report provides further clarifications regarding award of the subject contract that are important in light of Scheidt & Bachmann's expressed concerns over the results of the procurement.

Procurement Process

The County followed the Request for Proposal (RFP) process which prioritized negotiation with the highest ranked proposer based on best value and not necessarily lowest cost. The RFP allowed that if the Negotiation Committee was unable to successfully reach agreement with the highest ranked proposer, negotiations with the next highest proposer could be held. If the County were to choose to re-enter negotiations and negotiate with both Cubic and S&B, the process would have to be completed under a bid waiver. The time it would take to complete negotiations would cost the County are estimated at approximately $300,000 per month based on foregone revenue alone at Miami-Dade Transit, much less continued staff time on this project. Further, the rights of protest would still be available on any future revised recommendation, invoking these very same deliberations again unless protest was waived.

Evaluation/Selection Committee Scoring

After the initial scoring, the Evaluation/Selection Committee scored the two proposals at a 54 point difference. After oral presentations, the delta between the two companies reduced to eight (8) points. During the oral presentations, the Committee heard that both proposers would be compliant with the requirements in the RFP. Even though S&B proposed a lower price, the Evaluation/Selection Committee concluded Cubic proposed a more compliant, operationally viable system.

The Selection/Evaluation Committee (Committee) discussed the County's opportunity to negotiate with Scheidt & Bachmann USA (S&B) and Cubic Transportation Systems, Inc. (Cubic), suggesting that a better price may be obtained if negotiations were held with both companies. The Committee was advised of the charge in the RFP to rate and rank the proposals and recommend negotiations with the highest ranked Proposer (See RFP #8481-2/22, Section 4.5). The suggestion made by many of the Committee members was not ignored; it simply could not be accommodated in this process without invoking a bid waiver, which ran contrary to the original intent for a full and open competitive solicitation. While the Committee fulfilled its charge and recommended negotiations with the highest ranked Proposer, the suggestion to negotiate with both companies was included in the Chairperson's report to the Department of Procurement Management (DPM) Director. However, pursuant to the terms of the RFP as advertised, the DPM, in consultation with the County Attorney's Office, directed the negotiating committee to negotiate first with the highest ranked firm. If negotiations with the highest ranked firm would have failed, staff would then have negotiated with the second ranked firm in accordance with the process set forth in the RFP. To negotiate with both firms would not have been consistent with the RFP as advertised. To negotiate with both firms simultaneously would have to be done in a bid waiver scenario, which this was not.

The Procurement Director, in consultation with the County Attorney's Office, discussed the issue of negotiations with Cubic and S&B. It was concluded that negotiations with Cubic was in keeping with the process outlined in the RFP.

The Farebox System

The Automated Fare Collection System proposed and negotiated with Cubic meets the County's needs and the requirements of the RFP. The Evaluation/Selection Committee ranked the Cubic proposal higher both initially and after oral presentations. The negotiated contract with Cubic provides the County with a service proven system that has been successfully implemented and is in full operation today. The UTFS (Universal Transit Farecard Standard) Part II requirement in the RFP is met by the system proposed by Cubic. The UTFS component is critical to the implementation of a regional fare system. S&B took a permissible exception to the UTFS and during the protest hearing agreed that including the UTFS would increase the cost of its proposal beyond their stated price.

S&B conditioned its price in 25 pages totaling 65 exceptions. During the protest hearings, S&B conceded that just one of the exceptions (UTFS) would result in a price increase. S&B itemized exceptions to the RFP, which has the potential, if accepted, to increase risk to the County in terms of product performance, and, if those exceptions are denied, further price increases are likely. If this is representative of the exceptions taken, it is unlikely that the County would have received a significantly better price. During the bid protest hearing, the project manager for S&B acknowledged that its proposal was not compliant with UTFS as specified in the RFP.

Protest & Results

The Hearing Examiner, who in this case was the former Chief Judge of the Judicial Circuit of Miami-Dade County, Retired Judge Leonard Rivkind, concluded that the Manager's recommendation to award to Cubic should be upheld. Decisions made during the process were not fraudulent or arbitrary, and were made giving due consultation with appropriate County entities.

The recommendation before you is the result of a fair and open process which was carried out in accordance with the RFP. Every consideration was made to obtain the best solution for MDT at the best price.

Assistant County Manager