

Memorandum

MIAMI-DADE
COUNTY

Date: February 17, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

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

From: 
Carlos Alvarez
Mayor

George M. Burgess
County Manager



Subject: Supplement to Award Recommendation to Honeywell International, Inc. for Building Management System (BMS) at Miami International Airport and General Aviation Airports

The following supplemental information is provided regarding the proposed award recommendation to Honeywell, Inc. for the Building Management System (BMS) at Miami International Airport and General Aviation Airports.

On January 22, 2009, the subject award recommendation was deferred to allow Aviation staff additional time to negotiate alternate indemnification provisions than those currently contained in the contract that would be mutually acceptable to the County and the contractor. I am pleased to report that staff and Honeywell have successfully agreed to language that provides adequate protections to the County without imposing undue liabilities on the contractor.

Under the negotiated alternate indemnification provisions, Honeywell's liability for "consequential damages" is capped at the value of the contract in a given three-year period, unlike standard County language where the contractor would be responsible for the full value. For example, Honeywell's liability for consequential damages in years one through three of the contract is limited to the contract value of the work performed by Honeywell in that period. Consequential damages are indirect damages; for example, were MIA to lose rent because of the failures of Honeywell's systems, the County's recovery is subject to the previously described cap. There is no cap on Honeywell's liability for direct damages, such as property damage or physical injury.

Notwithstanding this limitation, there is no cap on Honeywell's liability for consequential damages if those damages are caused by a failure of Honeywell's fire safety or security systems, or where such system contributes to liability.

It is therefore recommended that the Board adopt the accompanying item as amended by the changes set forth in this supplement for Volume 1, General Conditions of the final contract:

ARTICLE 12 INDEMNIFICATION AND HOLD HARMLESS

12.4 LIMITATIONS OF LIABILITY

12.4.1 IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECULATIVE, REMOTE, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT,

WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, MOLD, MOISTURE, INDOOR AIR QUALITY, OR OTHERWISE, ARISING FROM, RELATING TO, OR CONNECTED WITH THE SERVICES, EQUIPMENT, MATERIALS, OR ANY GOODS PROVIDED HEREUNDER IN EXCESS OF THE FOLLOWING VALUES:

1) FOR YEARS ONE THROUGH THREE, THE CUMULATIVE CONTRACT VALUE OF THE SERVICE AGREEMENT FOR YEARS ONE THROUGH THREE PLUS ANY ADDITIONAL VALUE OF WORK PERFORMED THROUGH THE DEDICATED ALLOWANCE ACCOUNT DURING THE SAME TIME PERIOD

2) FOR YEARS FOUR THROUGH SIX, THE CUMULATIVE CONTRACT VALUE OF THE SERVICE AGREEMENT FOR YEARS FOUR THROUGH SIX PLUS ANY ADDITIONAL VALUE OF WORK PERFORMED THROUGH THE DEDICATED ALLOWANCE ACCOUNT DURING THE SAME TIME PERIOD

3) FOR YEARS SEVEN THROUGH TEN, THE CUMULATIVE CONTRACT VALUE OF THE SERVICE AGREEMENT FOR YEARS SEVEN THROUGH TEN PLUS ANY ADDITIONAL VALUE OF WORK PERFORMED THROUGH THE DEDICATED ALLOWANCE ACCOUNT DURING THE SAME TIME PERIOD.

12.4.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IF A PORTION OF THE SERVICES INVOLVES THE INSTALLATION AND/OR MAINTENANCE OF SYSTEMS ASSOCIATED WITH SECURITY AND/OR THE DETECTION OF AND/OR REDUCTION OF RISK OF LOSS ASSOCIATED WITH FIRE, CONTRACTOR'S TOTAL LIABILITY ARISING OUT OF OR AS A RESULT OF ITS PERFORMANCE UNDER THIS AGREEMENT SHALL NOT EXCEED THE CONTRACT VALUES DETAILED IN 12.4.1, ITEMS 1-3. THE LIMITATIONS SET FORTH IN 12.4.2 SHALL NOT APPLY IF THE AUTHORITY HAVING JURISDICTION (AHJ) DETERMINES THAT THE CONTRACTOR'S EQUIPMENT OR SERVICE IS A DIRECT CAUSE, IN WHOLE OR IN PART, OF THE LOSS OR DAMAGE, OR IF THE CONTRACTOR OR ITS EQUIPMENT DIRECTLY CONTRIBUTE, IN WHOLE OR IN PART, TO THE LOSS OR DAMAGE BEING GREATER THAN SAID LOSS OR DAMAGE WOULD HAVE BEEN ABSENT SUCH DIRECT CONTRIBUTION. NOTWITHSTANDING THE PRECEDING, THE CONTRACTOR SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE EXCEPT IN PROPORTION TO ITS COMPARATIVE FAULT.


Assistant County Manager