

Memorandum



Date: July 14, 2009

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

From: George M. Burgess
County Manager

BPS
Agenda Item No. 4(M)

Subject: Recommendation to Reject Proposals for RFP No. 673: Employee Group Dental Insurance Program and Authorize a One Year Extension of Contract Nos. RFP421a, RFP421b and RFP421c.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve rejection of all proposals received for the Employee Group Dental Insurance Program and authorize extension of the current agreements for the Program to continue the dental insurance coverage for one year at the current rates offered for Plan Year 2009.

RFP NO: RFP 673

RFP TITLE: Employee Group Dental Insurance Program

DESCRIPTION: To obtain a voluntary multi-option, fully-insured employee group dental insurance program utilizing both prepaid and indemnity plan designs. The Program offers employees and retirees of Miami-Dade County, Public Health Trust/Jackson Health System, Industrial Development, Miami-Dade Expressway Authority, and the Town of Miami Lakes with competitive rates, professional plan administration and the flexibility to select from a host of participating dental providers.

TERM: Three years with three, one-year options to renew.

APPROVAL TO ADVERTISE: March 6, 2009

CONTRACT AMOUNT: \$22 million per year depending upon enrollment. (*\$16 Million – Miami-Dade County, approximately \$8 Million is paid by the County; and \$8 Million is paid by employee/retirees and \$5.6 Million – Public Health Trust/Jackson Health System.*)

METHOD OF AWARD: A full and open competitive Request for Proposals (RFP) process was utilized. The RFP allowed for selection of one provider for the indemnity plan and up to two providers for the pre-paid plans.

**VENDORS RECOMMENDED
 FOR AWARD:** None

**VENDORS NOT RECOMMENDED
 FOR AWARD:**

Vendors – Indemnity Plan Design	Vendors – Prepaid Plan Design
AETNA Life Insurance Company (Non Responsive)	AETNA Life Insurance Company (Non Responsive)
Delta Dental Insurance Company	Delta Dental Insurance Company (Non Responsive)
Dental Benefit Providers, Inc.	Dental Benefit Providers, Inc. (Non Responsive)
Guardian Life Insurance Company of America, The (Non Responsive)	Guardian Life Insurance Company of America, The (Non Responsive)
Humana Dental Insurance Company	Humana Dental Insurance Company (Non Responsive)
Metropolitan Life Insurance Company (Non Responsive)	Metropolitan Life Insurance Company (Non Responsive)
Standard Insurance Company (Non Responsive)	Union Security Insurance Company (Non Responsive)
United Concordia Insurance Company (Non Responsive)	

CONTRACT MEASURES: The Review Committee of February 18, 2009, recommended no measures for this contract as the funding source includes employee contributions.

LIVING WAGE: The services being provided are not covered under the Living Wage Ordinance.

USER ACCESS PROGRAM: The 2% User Access Program provision is not included as this is an employee benefits contract.

LOCAL PREFERENCE: Not applicable.

PROJECT MANAGER: Marsha Pascual, Division Director, General Services Administration

ESTIMATED EFFECTIVE DATE: Ten days after date adopted by the Board of County Commissioners, unless vetoed by the Mayor.

BACKGROUND

Miami-Dade County issued a solicitation for the provision of a voluntary multi-option, fully-insured dental benefits program. The solicitation allowed for selection of one provider for an indemnity plan up to two providers for prepaid plans. A total of fifteen proposals were submitted in response to the solicitation: eight proposals for the indemnity plan design and seven for the prepaid plan design. Upon initial review of the proposals, one indemnity plan design proposal and six prepaid plan design proposals were deemed non-responsive by the County Attorney's Office (*opinion attached hereto*). The remaining single proposal for the prepaid plan design and seven proposals for the indemnity plan design were evaluated and scored by the Evaluation/Selection Committee. Thereafter, five proposals were also deemed non-responsive by the County Attorney's Office (*opinion attached hereto*) leaving only three responsive proposals for indemnity and none for prepaid. With the majority of the proposals received in response to the solicitation being non-responsive for varying reasons, the evaluation process was stopped to allow for Miami-Dade County to consider its options and the best approach for ensuring that the Program is in place by open enrollment in the Fall.

While it is difficult to determine why so many proposals did not follow the solicitation requirements, some of the issues can be cured with a new solicitation. The majority of the non-responsive proposals either proposed multiple plans which was not allowed or followed industry practice by providing multiple underwriting assumptions which was determined to be a wholesale departure from the solicitation, both of which would provide the proposer a material advantage. Staff will re-evaluate the project and prepare the subsequent employee dental benefits program solicitation to include a re-designed procurement process that balances the Miami-Dade County's requirements and the industry practice.

Rejecting proposals will allow Miami-Dade County added flexibility in the material aspects of the specifications thereby ensuring a fair and open process that promotes competition. The current Program is provided by Metropolitan Life Insurance Company for the indemnity plan (Contract No. RFP421c) and Compbenefits Corporation for the two prepaid plans (Contract Nos. RFP421a and RFP421b, respectively). Miami-Dade County has received written agreement from these providers to extend the contracts for one year at the current rates offered. This extension will preserve the continuity of these benefits for Miami-Dade County employees, retirees and their dependents.



Assistant County Manager



MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss **DATE:** July 7, 2009
and Members, Board of County Commissioners

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

SUBJECT: Agenda Item No.

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 Mayor'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.

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR
OR COUNTY MAYOR'S DESIGNEE TO REJECT
PROPOSALS RECEIVED FOR THE REQUEST FOR
PROPOSALS TO OBTAIN EMPLOYEE GROUP
DENTAL INSURANCE PROGRAM
RFP NO. 673

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 the rejection of proposals received for Request for Proposals No. 673 for Employee Group Dental Insurance Program.

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:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 7th day of July, 2009. 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.



Memorandum



Date: April 24, 2009
To: Maria Carballeira
Procurement Contracting Officer
From: Oren Rosenthal
Assistant County Attorney
Subject: Responsiveness of Proposal – RFP 673 Employee Group Dental Insurance Program

You have asked this office if proposals from Guardian Life Insurance Company of America (“Guardian”), United Security Insurance Company (“United”), Delta Dental Insurance Company (“Delta Dental”), Humana Dental Insurance Company (“Humana Dental”) and Dental Benefit Providers Inc. (“Dental Benefit”) are responsive to RFP No. 673 Employee Group Dental Insurance Program (“RFP”). You ask if Guardian’s failure to sign their proposal and the other identified proposers submission of multiple proposals renders their proposals not responsive. For the reasons set forth below, we conclude that all five proposals are non-responsive to the RFP and DPM does not have the discretion to accept and evaluate the bids.

FACTS

We rely on the RFP and the information provided in your memorandum to this office dated April 1, 2009 and April 6, 2009 which are attached hereto.

You indicate that one bidder, Guardian, failed to submit a signed form B-1, Price Proposal Schedule, and did not provide a signed cover page or proposal bond to secure their proposal. A review of Guardian’s proposal reveals that this was likely caused by Guardian creating their own price proposal form which did not include the signature block rather than submitting a proposal on the County’s form.¹

You also indicate that four other proposers – United, Delta Dental, Humana Dental, and Delta Benefit – all submitted multiple proposals for the prepaid dental option of the RFP. Section 3.1 of the RFP provides that: “Proposer may submit only one proposal for each plan design...” and the RFP does not allow for the submission of multiple proposals for either of the requested plans.

DISCUSSION

Guardian’s proposal is not responsive because its failure to sign the bid form denies the County of any assurance that the proposal will be entered into if accepted by the County and would prevent the County from proceeding against proposer in the event that Guardian refuses to honor its proposal. *See Glatstien v. City of Miami*, 399 So.2d 1005 (Fla. 3d DCA), rev. denied, 407 So.2d 1102 (Fla. 1981) (a

¹ A cursory review of Guardian’s proposal reveals other significant irregularities with its proposal that are rendered moot by the instant finding that the proposal is not responsive and as such will not be addressed here.

defect in a bid is not waivable if the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements). Generally, an unsigned proposal may be considered responsive if it "is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself)." 48 C.F.R. 14.405 (c)(1). Guardian's proposal did not include a cover letter and a bid bond was not required by the solicitation. Moreover, there is a notation on the cover page of the proposal that indicates "Proposal is being submitted on behalf of Vidal Lissarrague at American Assurant Underwrites, Inc." As such, there is no evidence of Guardian's intent to be bound to the proposal. This opinion is consistent with prior opinions from this office finding that failure to sign a proposal is a material defect rendering the proposal nonresponsive.

The other four proposers, United, Delta Dental, Humana Dental, and Delta Benefit, all included either "several versions," "options," or "alternatives" rather than submitting "only one proposal for each plan design" as required by the RFP. This variance renders these proposals not responsive.

In general, a proposal may be rejected or disregarded if there is a variance between the proposal and the advertisement. See *Robinson Electric Co. v. Dade County*, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982). Only when a variance is immaterial or "minor" is a bidder permitted to withdraw the variance. *Hurry Pepper & Associates, Inc. v. City of Cape Coral*, 352 So.2d 1190, 1129 (Fla. 2d DCA 1977) ("a bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities"). Proposers who propose impermissible exceptions to solicitations do so at the risk of those exceptions being deemed material to the proposal and having their proposals rejected as not responsive.

The determination of whether a variance or irregularity is minor is fact specific and may differ from solicitation to solicitation. Florida courts have used a two part test to determine if a specific noncompliance in a proposal constitutes a substantial and thus nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely effect competitive bidding by placing a proposer in a position of advantage over other proposers. See *Glatstien*, 399 So.2d 1005.

Here, the submission of multiple proposals would provide these four proposers with a material advantage not afforded the other proposers. By ignoring the requirements of the solicitation, these proposers are requesting the benefit of multiple evaluations in the hope that one of their plans will be evaluated as superior to the single plan submitted by the other conforming proposers. Such a result subverts the intent of the solicitation and provides these bidders with a material advantage that may not be cured after proposal submission. In addition, the submission of multiple proposals places the burden and cost of determining the proposer's best proposal on the County rather than on the proposer. While a solicitation may provide for this possibility, this solicitation did not.

Accordingly, all five proposals are not responsive.



Oren Rosenthal

Memorandum



Date: May 4, 2009
To: Maria Carballeira
Procurement Contracting Officer
From: Oren Rosenthal
Assistant County Attorney
Subject: Responsiveness of Proposal – RFP 673 Employee Group Dental Insurance Program –
Aetna Life Insurance Company

You have asked this office if a proposal from Aetna Life Insurance Company (“Aetna”) may be considered responsive to the above referenced Request for Proposals (“RFP”). For the reasons set forth below, we conclude that Aetna’s bid is non-responsive to the RFP and DPM does not have the discretion to accept it.

FACTS

We rely on the information provided in your memorandum to this office dated April 23, 2009 and your e-mail dated April 30, 2009 attached hereto.

In your original memorandum, you asked whether Aetna’s bid may be considered responsive given discrepancies in their description of “Plan 52” and “Plan 67” in their proposal. In reviewing those issues, this office identified a more serious irregularity in Aetna’s bid. Specifically, this office requested further information based on the portion of Aetna’s proposal titled “Dental Financial Assumptions.” That section conditions the price provided “on the assumptions outlined in this document.” The section then provides that: “It is important to note that deviations from these assumptions may result in additional charges and/or adjustments to our quote” and lists seven pages of assumptions.

Based upon these statements, you conducted a further review and identified that Aetna’s conditional assumptions varied from the proposal by: (1) agreeing to hold the price quote open for only 90 days rather than the 180 days requested in the RFP; (2) conditioning the price offered on Aetna being awarded an exclusive contract with the County instead of being one of three vendors requested in the RFP; (3) offering the rates proposed for only 12 months rather than the 36 month bid requested in the RFP; and (4) limiting the covered employees of the plans to exclude domestic partners.

DISCUSSION

Based on the facts set forth above, DPM may not consider Aetna’s proposal as responsive to the RFP. In general, a proposal may be rejected or disregarded if there is a variance between the proposal and the advertisement. *See Robinson Electric Co. v. Dade County*, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982). Only when a variance is immaterial or “minor” is a bidder permitted to withdraw the variance. *Harry Pepper & Associates, Inc. v. City of Cape Coral*, 352 So.2d 1190, 1129 (Fla. 2d DCA 1977) (“a bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities”). Proposers who propose impermissible exceptions to invitations to RFPs do so at the

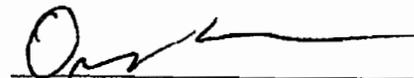
risk of those exceptions being deemed material to the proposal and having their proposal rejected as nonresponsive.

The determination of whether a variance or irregularity is minor is fact specific and may differ from proposal to proposal. Florida courts have used a two part test to determine if a specific noncompliance in a proposal constitutes a substantial and thus nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely effect competitive bidding by placing a proposer in a position of advantage over other proposers. See *Glatstien v. City of Miami*, 399 So.2d 1005 (Fla. 3d DCA), rev. denied, 407 So.2d 1102 (Fla. 1981). For the price portion of a proposal, if the irregularity has a clear and demonstrable affect on the amount of the price proposed, it is a material deviation that cannot be waived. See *Harry Pepper*, 352 So. 2d at 1193 ("The test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive nature is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by other bidders").

In some cases, however, irregularities that are tangential to the actual proposal may not be considered material if they do not adversely affect the interests of the County. See *Tropabest Foods, Inc. v. State, Dept. of Gen. Services*, 493 So.2d 50, 52 (citing the Florida Administrative Code's provisions that a minor irregularity is one which "does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders or does not adversely impact the interests of the agency").

Here, Aetna's price proposal is a wholesale departure from the RFP and is in effect a non-bid. Aetna's refusal to hold the price open for 180 days, request for exclusivity, refusal to maintain the pricing for the full 36 month term, and exclusion of domestic partners from the price proposals all conflict with material provisions of the County's specification created to protect the County. Not only does this variance give Aetna a material advantage over the other proposals who comply with these requirements, but the variances also make Aetna's bid illusory by conditioning it on items that are fundamentally adverse to the procurement process and the RFP itself. Aetna may not now, after all the proposals are opened, decide whether it wants the job badly enough to accept the County's specifications and abandoned their assumptions. As such, Aetna's proposal is not responsive.

In light of the fact that six of the seven vendors submitting proposals have been found not responsive, the County, as always, has the right to reject all bids and reprocure this service through a revised solicitation calculated to obtain the greatest number of responsive proposals.



Oren Rosenthal

Memorandum



Date: May 17, 2009
To: Maria Carballeira
Procurement Contracting Officer
From: Oren Rosenthal
Assistant County Attorney
Subject: Responsiveness of Proposals – RFP 673 Employee Group Dental Insurance Program

You have asked this office if proposals from Aetna Life Insurance Company (“Aetna”), United Concordia Insurance Company (“Concordia”), Standard Insurance Company (“Standard”), and two bids from Metropolitan Life Insurance Company (“MetLife”) may be considered responsive to the above referenced Request for Proposals (“RFP”). For the reasons set forth in this Office’s May 4, 2009 Memorandum on Aetna’s pre-paid plan, we conclude that these proposers are non-responsive to the RFP and DPM does not have the discretion to accept them.

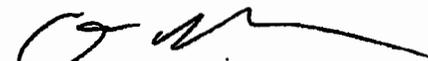
FACTS

We rely on the information provided in your memorandum to this office dated May 11, 2009 attached hereto. Further, we rely on a May 4, 2009 memorandum wherein this office opined that Aetna’s price proposal was “illusory” because it was conditioned “on items that are fundamentally adverse to the procurement process and the RFP itself.”

In your current e-mail, you asked whether the aboved referenced proposers may be considered responsive given the proposals’ price offers are conditioned in ways similar to Aetna’s non-responsive proposal. A discussion of each of the assumptions and conditions is detailed in your May 11, 2009 e-mail and are incorporated herein by reference.

DISCUSSION

Based on the facts set forth your e-mail, and our prior analysis, the aboved referenced proposals are likewise illusory and DPM may not consider them as responsive to the RFP. For example, both Concordia and Standard write in their proposals that the prices quoted are “intended for informational purposes and is not an offer to contract.” Unless special provision is made in the RFP for such proposals, failure to propose a price based upon the provisions of the RFP renders all of these proposals non-responsive.


Oren Rosenthal