Memorandum

MIAMI-DADE COUNTY

Date: July 21, 2009

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

From: George M. Burgess
County Manager

Supplement to
Agenda Item No.
8O1A

Subject: Supplement to Recommendation for Approval to Award Contract No. RFP 649: Inmate Commissary and Banking Services

RECOMMENDATION

It is recommended that the Board of County Commissioners uphold the County Manager's recommendation and authorize award of the above referenced contract to ARAMARK Correctional Services, LLC (ARAMARK). This contract will provide Inmate Commissary and Banking Services for inmates at the County's detention facilities.

A protest was filed by Keefe Commissary Network (Keefe). The protest was heard by a Hearing Examiner on June 24, 2009. The Hearing Examiner recommended the County Manager's award recommendation be rejected. Notwithstanding the Hearing Examiner's findings, the recommendation to award to ARAMARK remains unchanged.

BACKGROUND

The solicitation was advertised on September 24, 2008. Four proposals were received in response to the solicitation. Upon initial review of the proposals, it was noted that Keefe's proposal lacked an appropriate signature required to validate the offer. A request for a responsiveness determination on this issue was forwarded to the County Attorney's Office (CAO). The CAO deemed the offer from Keefe non-responsive for failure to execute the proposal *(opinion attached)*. The signature is required as an indication of intent to be bound by the offer. The Evaluation/Selection Committee evaluated the remaining three proposals and recommended negotiations with the highest ranked proposer, ARAMARK. After successful negotiations, award was recommended to ARAMARK.

On January 16, 2009, Keefe filed a protest disputing the CAO responsiveness determination. As the award recommendation had not been filed with the Clerk of the Board, the protest was premature. The Clerk of the Board notified Keefe and the filing fee was returned.

The award recommendation was filed with the Clerk of the Board and notice was sent to all proposers on May 29, 2009. Keefe filed their intent to protest the award recommendation on June 3, 2009, and filed additional grounds for the protest on June 18, 2009 *(both attached)*. While Keefe raised several issues in its protest, essentially the protest disputed the CAO's finding that the proposal from Keefe was non-responsive. Keefe claimed that the lack of a signature in the proposal was not a material component of the solicitation. Keefe further claimed that the submission of a proposal as well as the signature on certain informational forms in the proposal was evidence of intent to be bound to its offer. A detailed review of the entire proposal by staff and the CAO did not identify any signature that would effectively bind the offer. The CAO responded to the protest via the attached Miami-Dade County's Opposition to Keefe Commissary Network's Bid Protest *(dated June 23, 2009)* and Miami-Dade County's Supplementary Brief *(dated June 29, 2009)*.

The Hearing Examiner found that the protester had established grounds to sustain its protest and recommended rejection of the County Manager's award recommendation. The Findings of Fact, Conclusions of Law and Recommendations of Hearing Examiner is attached. The Hearing Examiner characterized Keefe's failure to sign its proposal as a "minor irregularity" that was waivable by the County. The Hearing Examiner further recommended that the proposal for Keefe be scored and included in the evaluation process. However, there is no reason to do so as the proposal from Keefe was deemed non-responsive by the CAO and cannot be recommended for award. The CAO has reviewed its responsiveness determination and the Hearing Examiner's findings, and maintains that the failure by Keefe to execute its proposal is a material deviation. Therefore, the proposal is non-responsive and cannot be considered by the County.

Assistant County Manager

Attachments

Memorandum: Request for Responsiveness Determination *(dated November 20, 2008)*
Written Intent to Protest *(dated June 3, 2009)*
Notice of Filing Additional Public Records and Additional Grounds for Protest *(dated June 18, 2009)*
Miami-Dade County's Opposition to Keefe Commissary Network's Bid Protest *(dated June 23, 2009)*
Miami-Dade County's Supplementary Brief *(dated June 29, 2009)*
Findings of Fact, Conclusions of Law and Recommendations of Hearing Examiner *(dated July 1, 2009)*

Memorandum

MIAMI-DADE COUNTY

Date: November 20, 2008

To: Hugo Benitez
Assistant County Attorney
County Attorney's Office

From: Steven Corwin, CPPO, C.P.M.
Procurement Contracting Officer
Department of Procurement Management

Subject: Request for Responsiveness Determination on RFP No. 649, Inmate Commissary and Banking Services

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On November 17, 2008, proposals were received for the subject RFP and subsequently reviewed for responsiveness. One of the Proposers was Keefe Commissary Network (KCN). Upon review of the KCN proposal, it was noted that KCN failed to sign Form A-1, Cover page of Proposal. Please advise whether the subject proposal is non-responsive.

If you have any questions, please contact me at (305) 375-3673. Thank you for your attention to this matter.

Attachments
Reference Proposal

Failure to execute a bid or proposal rendered a bid non-responsive. Absent another unequivocal indication of intent to be bound by the offer, the proposal must be rejected. Hug. Benitez

11/20/08

MIAMI-DADE COUNTY
DEPARTMENT FOR PROCUREMENT MANAGEMENT

KEEFE COMMISSARY NETWORK, L.L.C.,

Case No. _____

v.

MIAMI-DADE COUNTY,
DEPARTMENT OF PROCUREMENT MANAGEMENT

CLERK OF THE BOARD
2009 JUN -3 PM 12:20
CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1

WRITTEN INTENT TO PROTEST

Keefe Commissary Network, L.L.C. ("Keefe"), through its undersigned counsel, protests a recommended award by the Miami-Dade County Department of Procurement Management and County Manager to reject Keefe's bid from consideration in connection with Request for Proposals No. 649 and to instead award a contract to Aramark Correctional Services, LLC ("Aramark"), stating.

1. Miami-Dade County, through its Department of Procurement Management for Corrections and Rehabilitation Department, issued Request for Proposals No. 649 (the "RFP"). The RFP sought proposals to provide Inmate Commissary and Banking Services.

2. Keefe and other potential vendors attended a Pre-Proposal Conference in connection with the RFP.

3. On October 29, 2008, Keefe filed a Proposal in response to the RFP. Keefe's Response to the RFP was complete and responsive to all material terms of the RFP.

4. On May 29, 2009, Miami-Dade County's Procurement Contracting Officer issued a notice concerning the County Manager's recommendation for award in connection with the RFP. A copy is attached as Exhibit "A". The County Manager recommended that a contract should be awarded to Aramark. See Ex. "A".

5. As to Keefe's submission, the County Manager's recommendation announced that the proposal from Keefe Commissary Network was "non-responsive."

Whether Keefe's Proposal was Responsive to the Material Requirements of the RFP

6. Upon information and belief, the County Attorney's Office and the County Manager alleged that Keefe's Proposal was non-responsive because it allegedly lacked a single signature on one among many forms included within its submission. Keefe disputes this allegation and alleges that, if any signature was missing, then that signature was not a material component of the RFP.

7. The RFP called for respondents to submit a Cover Page to their Proposals. See RFP, "Proposal Submission Packet," p. 1 ¶ 1, attached as Exhibit "B". The RFP called for the cover page to be signed, but not notarized.

8. More explicitly, the RFP required respondents to complete "Affidavits/Acknowledgements" in connection with their proposals. See RFP, Exh. "B," p. 1 ¶ 3. The "Affidavits/Acknowledgements" section of the RFP reads as follows:

3. **Affidavits/Acknowledgements**
Complete and sign the following forms:

Form A-2, Lobbyist Registration for Oral Presentations
Form A-3, Acknowledgement of Addenda
Form A-4, Local Business Preference
Form A-5, Proposer's Disclosure of Subcontractors and Suppliers
Form A-6, Fair Subcontracting Policies

See id.

9. Keefe submitted a proposal that demonstrated Keefe's clear intent to be bound by its offer. Keefe provided signatures, some of which were notarized, in response to every form required by the RFP's "Affidavits/Acknowledgements" section. Clear indication of Keefe's intent to be bound can be found at the following portions of Keefe's proposal:

a. Tab no. 24, page 99 of Keefe proposal -
Form A-2 of RFP, Executed Affidavit of Miami-Dade County lobbyist registration for oral presentation, a signature that was also notarized.

b. Tab no. 24, page 100 of Keefe proposal -
Form A-3 of RFP, Executed Acknowledgement of Addenda.

c. Tab no. 24, page 102 of Keefe proposal -
Form A-4 of the RFP, Executed Local Business Preference, a signature that was also notarized.

d. Tab no. 24, page 103 of the Keefe proposal -
Form A-5 of the RFP, Executed Proposer's Disclosure of Subcontractors and Suppliers; and

e. Tab no. 24, page 104 of the Keefe proposal -
Form A-6 of the RFP, Executed Fair Subcontracting Policies.

10. Upon information and belief, Miami-Dade County officials have alleged that the cover page (Form A-1) of Keefe's Proposal did not include a signature. If this is true, then the missing signature merely constitutes scrivener's error.

11. The small oversight of a missing signature on a cover sheet represents minor irregularity that the County may waive. Within the RFP, the County has reserved the right to waive minor irregularities: "the County may, at its sole and absolute discretion . . . waive any irregularities in this Solicitation or in the responses received as a result of this process." See RFP, Section 1.3, page 2, attached as Exhibit "B."

12. Any failure of Keefe to sign the cover sheet, when considered in the context of the five other signatures contained in Keefe's Proposal, should be considered a minor irregularity and waived. Keefe clearly intended its offer to be binding. Rejection of Keefe's proposal for minor irregularities, such as omitting one among several signatures, would constitute arbitrary and capricious action.

13. In this case, there is a very strong public interest in favor of saving tax dollars in awarding public contracts. There is no public interest, much less a substantial public interest, in disqualifying low bidders for technical deficiencies in form, where the low bidder did not derive any unfair competitive advantage by reason of the technical omission. Overstreet Paving v. Department of Transportation, 608 So. 2d 851, 853 (Fla. 2d DCA 1992); Intercontinental

Properties, Inc. v. State Department of Health & Rehabilitative Services, 606 So. 2d 380, 386 Fla. 3d DCA 1992). The public purpose is best served by construing bid requirements, if at all reasonable, in a way that would give all bidders an opportunity to compete. Air Support Services v. Metro Dade County, 614 So. 2d 583, 584 (Fla. 3d DCA 1883).

Timing of Protest

14. This is the second protest filed by Keefe. When Keefe first learned that it would not receive an invitation to make an oral presentation, nor have its bid evaluated, it protested that decision in order to preserve its rights and receive a fair evaluation of the merits and price of its proposal. Unfortunately, that protest was dismissed as premature because it pre-dated the County Manager's final recommendation for award.

15. On May 29, 2009, the County provided Notice of the County Manager's recommendation to award a contract to Aramark and reject the proposal made by Keefe as non-responsive.

16. This Notice of Written Protest is filed in order to contest that decision. It is filed within three (3) days of the County Manager's recommendation and is therefore timely filed. See RFP No. 649, Section 4.8B.

17. This protest is accompanied by the $5,000 filing fee required by Section 4.8C. of the RFP. The fee is attached as Exhibit "C."

Reservation of Rights

18. Keefe reserves the right to contest the responsiveness and scoring of all other bids submitted in response to the RFP, including the proposals submitted by Aramark, Swanson Services Corporation and Trinity Services, Inc.

19. In particular, and without waiving additional arguments, Keefe contests the ability of Aramark to meet the requirements of the RFP, including, but not limited to, Aramark's ability to comply with "Proposer Information" required by the RFP such as a detailed description of a minimum of five (5) "contracts similar in size (number of inmates) and scope of services (commissary and banking services)" to those requested in the RFP.

20. Upon information and belief, Aramark has no contracts of a similar size and scope of services to those requested in the RFP.

21. Keefe has submitted a public records request which seeks the proposals submitted in response to the RFP, and copies of the evaluators' scoring and worksheets. Pursuant to Section 2.83 and 2.84 of the County Code and Administrative Order No. 3-21, Keefe reserves the right to supplement the arguments identified in this Notice of Protest within forty-eight (48) hours of receiving the items requested in its public records request.

WHEREFORE, pursuant to Section 2-8.4(c) of the County Code, and Section 4.7 of the RFP. Keefe requests:

(a) that this protest be referred to a hearing examiner within five (5) working days;

(b) that a hearing in connection with this bid protest be completed within ten (10) working days following his or her appointment;

(c) that the hearing examiner, within five (5) working days of the hearing, file written findings and recommendations with the Clerk of the Board finding and recommending that Keefe's proposal be evaluated as it is responsive to the material requirements of the RFP, that Keefe's proposal was superior to all other proposals and that contract award should be made to Keefe.

Respectfully submitted,

Seann M. Frazier
GREENBERG TRAURIG, P.A.
101 E. College Avenue
Post Office Drawer 1838
Tallahassee, FL 32302
Phone Number (850) 222-6891
Facsimile Number (850) 681-0207

Joshua Alhalel
GREENBERG TRAURIG, P.A.
1221 Brickell Avenue
Miami, Florida 33131
Phone Number (305) 579-0500
Facsimile Number (305) 579-0717

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original has been filed with the Clerk of the Board, Stephen P. Clark Center, 111 Northwest 1st Street, 17th Floor, Suite 202, Miami, Florida 33128-1983; and a copy will be mailed to all participants in the competitive process.

Joshua Alhalel

EXHIBIT A

MIAMI-DADE COUNTY

Carlos Alvarez, Mayor

Procurement Management
111 NW 1st Street • Suite 1300
Miami, Florida 33128-1974
T 305-375-5289 F 305-375-4407 305-372-6128

miamidade.gov

May 29, 2009

All Responding Proposers (See Distribution List)

SUBJECT: RFP649
Inmate Commissary and Banking Services

Dear Proposers:

Evaluation of proposals tendered in response to the above cited solicitation has been completed. The County Manager or designee has recommended award as shown in the attached document.

This notice is provided in accordance with Section 4.8 of the solicitation and Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County. Our provision of this notice also serves to confirm the lifting of the Cone of Silence from this procurement action as dictated by Section 2-11.1(t) of the County Code.

We appreciate the participation of all proposers which responded to the subject action. If you have any questions, please contact me at 305-375-4211 or gonzaam@miamidade.gov.

Sincerely,

Amado Gonzalez
Procurement Contracting Officer

Distribution List: ARAMARK Correctional Services, LLC
Swanson Services Corporation
Keefe Commissary Network
Trinity Services, Inc.

FILED
CLERK OF THE BOARD
2009 MAY 29 PM 4:18
CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1

Attachment: County Manager Award Recommendation

cc: Clerk of the Board
Oren Rosenthal, Assistant County Attorney
File

Delivering Excellence Every Day

5/21/09 #202750

Memorandum

MIAMI-DADE COUNTY

Date:

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

From: George M. Burgess
County Manager

Subject: Recommendation for Approval to Award Contract No. RFP 649: Inmate Commissary and Banking Services

RECOMMENDATION

It is recommended that the Board of County Commissioners approve award of this contract to provide inmate commissary and banking services for the Miami-Dade Corrections and Rehabilitation Department.

CONTRACT NO:	RFP 649
CONTRACT TITLE:	Inmate Commissary and Banking Services
DESCRIPTION:	To obtain proposals from qualified firms to provide Inmate Commissary and Banking Services for inmates at detention facilities. The commissary services include supplying items such as stationary, snacks, toiletries and clothing. The selected proposer shall provide and maintain computer hardware and software to have an integrated financial system which will track the inmates' accounts. The banking services include maintaining accounts for inmates' personal property and funds, and for invoicing of medical services.
TERM:	Four years with six, one-year options-to-renew.
APPROVAL TO ADVERTISE:	September 18, 2008
CONTRACT AMOUNT:	$4.4 million in revenue to the County for the initial four year term of the contract. If the County exercises the six, one-year options-to-renew, the total contract revenue is projected to be $11 million.
METHOD OF AWARD:	Awarded to the highest ranked responsive, responsible vendor based on the evaluation criteria established in the solicitation. A full and open competitive Request for Proposals process was used.

VENDOR RECOMMENDED FOR AWARD:

Vendor	Address	Principal
ARAMARK Correctional Services, LLC (Non-local vendor)	1101 Market Street Philadelphia, PA 19107	Thomas Burns, Vice President

PERFORMANCE DATA: There are no known performance issues with this firm.

COMPLIANCE DATA: There are no known compliance issues with this firm.

VENDORS NOT RECOMMENDED FOR AWARD: Swanson Services Corporation
Trinity Services, Inc.
Keefe Commissary Network (non-responsive)

CONTRACT MEASURES: The Review Committee of February 15, 2008, recommended no measures. This is a revenue generating contract.

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 contract is revenue generating.

LOCAL PREFERENCE: Applied in accordance with applicable Ordinance, but did not affect the outcome.

PROJECT MANAGER: Shella Siddiqui, Department of Correction and Rehabilitation

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

DELEGATED AUTHORITY: If this item is approved, the County Mayor or designee will have the authority to exercise, at County Mayor's or designee's discretion, subsequent options-to-renew and other extensions in accordance with the terms and conditions of the contract.

BACKGROUND

Miami-Dade Corrections and Rehabilitation Department (MDCR) provides commissary and banking services (including inmate account maintenance and trust fund management) for approximately 7200 inmates incarcerated in five jail facilities. The services are provided pursuant to Florida Statute 951.23 and Florida Model Jail Standards. The current contract has been in place for over 10 years and will expire on October 13, 2009.

Commissary orders placed by inmates are delivered once a week to a centralized delivery point. Miami-Dade Correction and Rehabilitation (MDCR) personnel accept the commissary orders and deliver the items to the individual cells. Inmates currently place their orders using scantron forms that require manual processing. The recommended contract provides an automated solution by connecting commissary orders to inmate trust accounts via real-time banking servers for inmate populations under direct supervision (approximately 4,328 inmates). An enhancement over the current contract is the inclusion of automated self-service kiosks which will allow inmates to check their trust accounts, place commissary orders, file grievances, and request medical and counseling services. MDCR will also use the kiosks to post general inmate announcements and bulletins. Another enhancement is the automated payment and deposit service which allows visitors at MDCR facilities to make deposits into inmate trust accounts via kiosks in the lobby. On-line deposits will also be accepted.

These services are revenue generating as the County receives a commission (currently 32 percent) for commissionable items sold. The new contract provides a 39 percent commission. This rate is applied to all commissary items, except for non-commissionable "welcome" hygiene kits and indigent kits that are paid for by the County. The County also has the option to require the vendor to deliver the commissary supplies directly to the inmates at a reduced commission rate of 35 percent. Commission (i.e., revenues) from commissary sales will continue to provide revenue for the Inmate Welfare Fund, which is administered through a Committee comprised of County staff. These funds are used for the overall inmate welfare and may include vocational training, educational training, General Equivalency Diploma testing, religious items (i.e., Bibles, Korans) recreational items, inmate re-entry activities, and rehabilitation programs. The funds are used pursuant to state statute and comply with all County finance rules.

The County Attorney's Office deemed the proposal from Keefe Commissary Network non-responsive. On January 16, 2009, Keefe Commissary Network filed a bid protest disputing this determination. As the County Manager's award recommendation had not been filed with the Clerk of the Board, the protest was premature. The proposer was notified and the filing fee was returned.

Assistant County Manager

EXHIBIT B

PROPOSAL SUBMISSION PACKAGE

Request for Proposals (RFP) No. 649
Inmate Commissary and Banking Services

In response to the Solicitation, Proposer shall RETURN THIS ENTIRE PACKAGE completed as follows:

1. **Form A-1, Cover Page of Proposal**
   Complete and sign (by Proposer or representative of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer) as required.

2. **Proposer Information**
   Complete the Proposer Information section following the requirements therein.

   Note: The Proposer Information document is available in an electronic format (Word) by submitting a written request via e-mail to the County contact person for this Solicitation.

3. **Affidavits/Acknowledgements**
   Complete and sign the following forms:

   Form A-2, Lobbyist Registration for Oral Presentations
   Form A-3, Acknowledgement of Addenda
   Form A-4, Local Business Preference
   Form A-5, Proposer's Disclosure of Subcontractors and Suppliers
   Form A-6, Fair Subcontracting Policies

4. **Form B-1, Price Proposal Schedule**
   Complete and sign (by Proposer or representative of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer) as required.

5. **Proposal Submission**
   Submit in hardcopy format an original, complete Proposal Submission Package and seven (7) copies of the complete package **by the Proposal Due Date** (see front cover of Solicitation) in a sealed envelope/container addressed as follows:

Proposer's Name
Proposer's Address
Proposer's Telephone Number

Clerk of the Board
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, FL 33128-1983

RFP No.:649
RFP Title: Inmate Commissary and Banking Services
Proposal Due Date:

Form A-1

PROPOSER'S NAME (Name of firm, entity or organization):

FEDERAL EMPLOYER IDENTIFICATION NUMBER:

NAME AND TITLE OF PROPOSER'S CONTACT PERSON:

Name: Title:

MAILING ADDRESS:

Street Address: _____

City, State, Zip: _____

TELEPHONE:	*FAX:*	*E-MAIL ADDRESS:*
(___) _____	(___) _____	_____

PROPOSER'S ORGANIZATIONAL STRUCTURE:

___ Corporation ___ Partnership ___ Proprietorship ___ Joint Venture

___ Other (Explain): _____

IF CORPORATION,
Date Incorporated/Organized: _____

State Incorporated/Organized: _____

States registered in as foreign corporation: _____

PROPOSER'S SERVICE OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS SOLICITATION REQUESTS FOR:

LIST NAMES OF PROPOSER'S SUBCONTRACTORS OR SUBCONSULTANTS FOR THIS PROJECT:

CRIMINAL CONVICTION DISCLOSURE:
Pursuant to Miami-Dade County Ordinance No. 94-34, any individual who has been convicted of a felony during the past ten years and any corporation, partnership, joint venture or other legal entity having an officer, director, or executive who has been convicted of a felony during the past ten years shall disclose this information prior to entering into a contract with or receiving funding from the County.

☐ Place a checkmark here only if Proposer has such conviction to disclose to comply with this requirement.

PROPOSER'S AUTHORIZED SIGNATURE

The undersigned hereby certified that this proposal is submitted in response to this solicitation.

Signed By: _____ Date: _____

Print Name: _____ Title: _____

Proposer Information

Proposer's Experience, Qualifications and Past Performance

1. State the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.

2. Describe the Proposer's past performance and experience related to providing commissary services in the corrections industry. Include a description of the services provided and the number of years the Proposer has been providing these services.

3. Describe the Proposer's past performance and experience related to providing inmate banking software in the corrections industry. Include a description of the services and software provided, the number of Proposer's clients currently with the software proposed for the County, and the number of years the Proposer has been providing these services.

4. Describe Proposer's experience in successful conversions of another vendor's data as part of a transition to the Proposer's Inmate Banking System.

5. Provide a detailed description of a minimum of 5 contracts similar in size (number of inmates) and scope of services (commissary and banking services) to those requested herein which the Proposer has either ongoing or completed within the past three years. The description should identify for each project: (i) customer, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) customer's contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project. Where possible, list and describe those projects performed for government clients or similar size private entities (excluding any work performed for the County).

6. List all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with County Ordinance No. 98-42, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project: (i) name of the County Department which administers or administered the contract, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) County contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project.

7. Provide information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors or subconsultants is or has been involved within the last three (3) years.

8. Provide documentation demonstrating Proposer's financial strength and financial capability to provide services. Such documentation should include Proposer's most recent certified financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial condition. If certified financial statements are not available provide latest available financial statements (balance sheet and income statement) and letters of credit availability from accredited financial institutions, or other relevant documentation.

9. Describe any other information which the Proposer deems relevant to explain the Proposer's experience and qualifications to perform the work requested in this Solicitation.

Key Personnel and Subcontractors Performing Services

10. Provide an organization chart showing all key personnel, including their titles, to be assigned to this project. This chart must clearly identify the Proposer's employees and those of the subcontractors or subconsultants and shall include the functions to be performed by the key personnel. All key personnel includes all partners, managers, seniors and other professional staff that will perform work and/or services in this project.

11. List the names and addresses of all first tier subcontractors or subconsultants.

12. Describe the extent of work to be performed by each first tier subcontractor or subconsultant.

13. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of the subcontractors or subconsultants who will be assigned to this project.

14. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of the 2 people to be dedicated to MDCR (see Section 2.9.24) and all other key personnel including those dealing with software and those of any subcontractors or subconsultants, who will be assigned to this project.

    Note: After proposal submission, but prior to the award of any contract issued as a result of this Solicitation, the Proposer has a continuing obligation to advise the County of any changes, intended or otherwise, to the key personnel identified in its proposal.

Proposed Approach to Providing the Services

15. Describe the Proposer's approach to providing the required services

16. Describe the Proposer's approach to providing the Additional Services (Section 2.14) and the Optional Services (Section 2.15).

17. Describe the Proposer's Quality Control Plan to manage the project.

18. Describe in detail the hardware the Proposer will provide and confirm that it will satisfy the requirements in Section 2.6.3 and Appendix A. Discuss how it will interface with MDCR's systems and provide a typical hardware configuration capable of supporting the System as described in the Scope of Services. Attach supporting documentation, pictures, specifications, etc. if available.

19. Describe in detail the software the Proposer will provide and discuss how it will achieve the outcomes and results expected as described in the Scope of Services. Attach supporting documentation, screen shots, etc. if available.

20. Provide a product list of the items the Proposer will be offering for sale, including a description such as brand name, size, price, etc.

21. Describe the methodology used in determining the prices and the Proposer's plan to comply with Florida Statute 951.23 and the Florida Jail Model Standards.

22. Provide complete implementation and conversion plans. The implementation plan should include schedule for delivery and installation of hardware and software (see Section 2.8.6). The conversion plan shall describe in detail how the Proposer will introduce its proposed commissary services, hardware and software so as to avoid any disruptions in service to MDCR (see Section 2.8.7). Provide a description of any anticipated problems and the steps the Proposer will take to resolve them.

23. Describe the training program the Proposer will be providing pursuant to Section 2.8.4.

24. Identify if Proposer has taken any exception(s) to the terms of this Solicitation. If so, indicate what alternative is being offered and the cost implications of the exception(s).

Form A-2
AFFIDAVIT OF MIAMI-DADE COUNTY
LOBBYIST REGISTRATION FOR ORAL PRESENTATION

(1) ProjectTitle: _____ Project No.: _____
(2) Department: _____
(3) Proposer's Name: _____
Address: _____ Zip: _____
Business Telephone: (____) _____

(4) List All Members of the Presentation Team Who Will Be Participating in the Oral Presentation:

NAME	TITLE	EMPLOYED BY	TEL. NO.

(ATTACH ADDITIONAL SHEET IF NECESSARY)

The individuals named above are Registered and the Registration Fee is <u>not</u> required for the Oral Presentation ONLY.

Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee must be listed on an affidavit provided by the County. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for additional team members added after submittal of the proposal with the Clerk of the Board at least two days prior to the oral presentation. Any person not listed on the affidavit or revised affidavit may not participate in the oral presentation.

Other than for the oral presentation, Proposers who wish to address the county commission, county board or county committee concerning any actions, decisions or recommendations of County personnel regarding this solicitation in accordance with Section 2-11.1(s) of the Code of Miami-Dade County MUST register with the Clerk of the Board and pay all applicable fees.

I do solemnly swear that all the foregoing facts are true and correct and I have read or am familiar with the provisions of Section 2-11.1(s) of the Code of Miami-Dade County as amended.

Signature of Authorized Representative: _____ Title: _____
STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____,
by _____, a _____, who is personally known
(Individual, Officer, Partner or Agent) (Sole Proprietor, Corporation or Partnership)
to me or who has produced _____ as identification and who did/did not take an oath.

_____
(Signature of person taking acknowledgement)

_____
(Name of Acknowledger typed, printed or stamped)

_____ _____
(Title or Rank) (Serial Number, if any)

Form A-3

ACKNOWLEDGEMENT OF ADDENDA

Instructions: Complete Part I or Part II, whichever is applicable.

PART I: Listed below are the dates of issue for each Addendum received in connection with this solicitation.

Addendum #1, Dated _____, 200___

Addendum #2, Dated _____, 200___

Addendum #3, Dated _____, 200___

Addendum #4, Dated _____, 200___

Addendum #5, Dated _____, 200___

Addendum #6, Dated _____, 200___

Addendum #7, Dated _____, 200___

Addendum #8, Dated _____, 200___

Addendum #9, Dated _____, 200___

PART II:

____ No Addendum was received in connection with this solicitation.

Authorized Signature: _____ Date: _____

Print Name: _____ Title: _____

Firm Name: _____

A-3 - Rev. 1/27/00

Form A-4

LOCAL BUSINESS PREFERENCE

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses. A local business, for the purposes of receiving the aforementioned preference above, shall be defined as a Proposer which meets all of the following.

1. Proposer has a valid Local Business Tax Receipt (formerly know as an Occupational License), issued by Miami-Dade County at least one year prior to proposal submission, that is appropriate for the goods, services or construction to be purchased.

   Proposer shall attach a copy of said Miami-Dade County Local Business Tax Receipt hereto. (Note: Current and past year receipts, or occupational licenses, as may be applicable, may need to be submitted as proof that it was issued at least one year prior to the proposal due date.)

2. Proposer has a physical business address located within the limits of Miami-Dade County from which the Proposer operates or performs business. (Post Office Boxes are not verifiable and shall not be used for the purpose of establishing said physical address.)

   Proposer shall state its Miami-Dade County (or Broward County if applicable, see note below) physical business address _____

3. Proposer contributes to the economic development and well-being of Miami-Dade County in a verifiable and measurable way. This may include but not be limited to the retention and expansion of employment opportunities and the support and increase in the County's tax base. To satisfy this requirement, the Proposer shall affirm in writing its compliance with any of the following objective criteria as of the proposal submission date:

   Check box, if applicable:

   ☐ a) Proposer has at least ten (10) permanent full time employees, or part time employees equivalent to 10 FTE ("full-time equivalent" employees working 40 hours per week) that live in Miami-Dade County, or at least 25% of its employees that live in Miami-Dade County.

   ☐ b) Proposer contributes to the County's tax base by paying either real property taxes or tangible personal property taxes to Miami-Dade County.

   ☐ c) Proposer contributes to the economic development and well-being of Miami-Dade County by some other verifiable and measurable contribution by_____

   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____
   _____

Proposer shall check the box if applicable and, if checking item "c", shall provide a written statement, above, defining how Proposer meets that criteria.

By signing below, Proposer affirms that it meets the above criteria to qualify for Local Preference and has submitted the requested documents.

Note: At this time, there is an interlocal agreement in effect between Miami-Dade and Broward Counties until September 30, 2009. Therefore, a Proposer which meets the requirements of (1), (2) and (3) above for Broward County shall be considered a local business for the purposes outlined herein.

Federal Employer Identification Number: _____

Firm Name: _____

Address: _____

City/State/Zip: _____

I hereby certify that to the best of my knowledge and belief all the foregoing facts are true and correct.

Signature of Authorized Representative: _____

Print Name: _____ Title: _____

Date: _____

STATE OF _____
COUNTY OF _____

SUBSCRIBED AND SWORN TO (or affirmed) before me on _____ (Date),

by _____ (Affiant). He/She is personally known to me or has

presented _____ (Type of Identification) as identification.

_____ (Signature of Notary) _____ (Serial Number)

_____ (Print or Stamp Name of Notary) _____ (Expiration Date)

Notary Public _____ (State) Notary Seal

FORM A-5
SUBCONTRACTOR/SUPPLIER LISTING
(Ordinance 97-104)

Name of Proposer _____

This form, or a comparable listing meeting the requirements of Ordinance No. 97-104, MUST be completed by all bidders and proposers on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of $100,000 or more, and all bidders and proposers on County or Public Health Trust construction contracts which involve expenditures of $100,000 or more. **This form, or a comparable listing meeting the requirements of Ordinance No. 97-104, must be completed and submitted even though the bidder or proposer will not utilize subcontractors or suppliers on the contract. The bidder or proposer should enter the word "NONE" under the appropriate heading of Form A-7.1 in those instances where no subcontractors or suppliers will be used on the contract.** A bidder or proposer who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon written approval of the County.

Business Name and Address of First Tier Subcontractor/Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/Subconsultant	(Principal Owner) *Gender*	*Race*

Business Name and Address of Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	(Principal Owner) *Gender*	*Race*

I certify that the representations contained in this Subcontractor/Supplier Listing are to the best of my knowledge true and accurate.

_____

Signature of Proposer's Authorized Representative **Print Name** **Print Title** **Date**

(Duplicate if additional space is needed)
Form A-5(new 5/7/99)

Form A-6

FAIR SUBCONTRACTING POLICIES
(Ordinance 97-35)

FAIR SUBCONTRACTING PRACTICES

In compliance with Miami-Dade County Ordinance 97-35, the Proposer submits the following detailed statement of its policies and procedures for awarding subcontracts:

I hereby certify that the foregoing information is true, correct and complete.

Signature of Authorized Representative: _____

Title: _____ Date: _____

Firm Name: _____

Form B-1

Price Proposal Schedule

A. PROPOSED COMMISSION

The Proposer shall provide all of the services in the Scope of Services (except the Additional Services described in Section 2.14 and Optional Services described in Section 2.15), furnish the equipment listed in Appendix A, and shall pay to the County, on all commissionable sales, the following commission.

Commission = _____% _____ percent
(Number) (Indicate number in words)

Notes:

1. The above Proposed Commission excludes the Additional Services in Section 2.14 and the Optional Services in Section 2.15, which will be priced separately should the County exercise its option.
2. The Commission Rate shall be fixed for the term of the Contract.
3. The County expects that commission proposed will be no less than thirty-two (32) percent.

B. PROPOSED PRICING FOR ADDITIONAL AND OPTIONAL SERVICES

The Proposer shall provide the pricing for the following items which the County may or may not exercise.

1. Delivery of commissary orders to individual inmates' cells
   (per Section 2.15 of the Scope of Services)

   $_____ delivery charge per inmate order
   (Number)

EXHIBIT "B"

REQUEST FOR PROPOSALS (RFP) 649
FOR
INMATE COMMISSARY AND BANKING SERVICES

PRE-PROPOSAL CONFERENCE TO BE HELD:

October 7, 2008 at 9:30 AM (local time)
111 NW 1st Street, 18th Floor, Conf. Rm. 18-1, Miami, Florida

ISSUED BY:
Department of Procurement Management
for
Corrections and Rehabilitation Department

COUNTY CONTACT FOR THIS SOLICITATION:

Name and Title: Steven Corwin, CPPO, C.P.M., Procurement Contracting Officer
Address: 111 NW 1st Street, Suite 1300, Miami, Florida 33128
Telephone: (305) 375-3673
E-mail: scorwin@Miami-Dade.gov

PROPOSALS ARE DUE AT THE CLERK OF THE BOARD NO LATER THAN:

October 29, 2008 at 2:00 PM (local time)
at
CLERK OF THE BOARD
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, Florida 33128-1983

The Clerk of the Board business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. Additionally, the Clerk of the Board is closed on holidays observed by the County.

All proposals received and time stamped by the Clerk of the Board prior to the proposal submittal deadline shall be accepted as timely submitted. The circumstances surrounding all proposals received and time stamped by the Clerk of the Board after the proposal submittal deadline will be evaluated by the procuring department in consultation with the County Attorney's Office to determine whether the proposal will be accepted as timely. Proposals will be opened promptly at the time and date specified. The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. The County will in no way be responsible for delays caused by mail delivery or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s).

The submittal of a proposal by a Proposer will be considered by the County as constituting an offer by the Proposer to perform the required services at the stated prices. A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The County will only consider the latest version of the proposal.

Requests for additional information or inquiries must be made in writing and received by the County's contact person for this Solicitation. The County will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the Proposal Due Date. Proposers who obtain copies of this Solicitation from sources other than the County's Department of Procurement Management website at www.Miami-Dade.gov/dpm or the Vendor Assistance Unit risk the possibility of not receiving addenda and are solely responsible for those risks.

1.0 PROJECT OVERVIEW AND GENERAL TERMS AND CONDITIONS

1.1 Introduction

Miami-Dade County, hereinafter referred to as the County, as represented by the Miami-Dade County Corrections and Rehabilitation Department (MDCR), is soliciting proposals from qualified firms to provide Inmate Commissary and Banking Services for inmates at the MDCR Detention Centers. The Banking Services includes processing and maintaining accounts for inmates' personal property, funds, and billing for medical services. The County prefers that the selected Proposer and any subcontractor have at least 5 years Commissary and/or Inmate Banking Systems experience serving facilities with an average daily population of not less than 3000 inmates.

The County anticipates awarding a contract for a four year period, with the option to renew for six, one-year periods, at the County's sole discretion. However, the County may, at its sole discretion, award more than one of these options at a given time as a result of negotiations with the selected Proposer for advantageous terms for the County.

The anticipated schedule for this Solicitation is as follows:

Solicitation issued:	
Pre-Proposal Conference:	See front cover for date, time and place. Attendance is recommended but not mandatory.
Deadline for receipt of questions:	
Proposal due date:	See front cover for date, time and place.
Evaluation process:	
Projected award date:	

1.2 Definitions

The following words and expressions used in this Solicitation shall be construed as follows; except when it is clear from the context that another meaning is intended:

1. The word "Contractor" to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as "the prime Contractor".
2. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
3. The word "Proposer" to mean the person, firm, entity or organization, as stated on Form A-1, submitting a response to this Solicitation.
4. The words "Scope of Services" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.
5. The word "Solicitation" to mean this Request for Proposals (RFP) or Request for Qualifications (RFQ) document, and all associated addenda and attachments.
6. The word "Subcontractor" to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.
7. The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Services and the terms and conditions of this Solicitation.

1.3 General Proposal Information

The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the responses received as a result of this process. Proposers may take exceptions to any of the terms of this Solicitation unless the Solicitation specifically states where exceptions may not be taken. The County may accept or reject the exceptions.

Proposals shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date or upon the expiration of 180 calendar days after the opening of proposals.

Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the County shall endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsible.

1.4 Cone of Silence

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, as amended, a "Cone of Silence" is imposed upon each RFP or RFQ after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs or RFQs between, among others:

- potential Proposers, service providers, lobbyists or consultants and the County's professional staff including, but not limited to, the County Manager and the County Manager's staff, the Mayor, County Commissioners or their respective staffs;
- the Mayor, County Commissioners or their respective staffs and the County's professional staff including, but not limited to, the County Manager and the County Manager's staff; or
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs and any member of the respective selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Assistance Unit, the responsible Procurement Agent or Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP or RFQ with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing (if County deems a response necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at CLERKBCC@MIAMI-DADE.GOV.

1.5 Public Entity Crimes

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier,

subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two ($10,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.6 Lobbyist Contingency Fees

A) In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.

B) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Manager or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

1.7 Collusion

Where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer or the principals thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership interest in another Proposer for the same contract. Furthermore, any prior understanding, agreement, or connection between two or more corporations, firms, or persons submitting a proposal for the same services shall also be presumed to be collusive. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

2.0 SCOPE OF SERVICES

2.1 Background

MDCR provides commissary services, inmate account maintenance, and trust fund management for approximately 7200 inmates incarcerated in five jail facilities. To accomplish this function, the Commissary Section has a staff of 8 employees. The jail facility locations and inmate capacity as of January 4, 2008 are:

Pretrial Detention Center	1321 NW 13 St Miami Fl (Civic Center Area)	1600 inmates
Women's Detention Center	1401 NW 7 Ave. Miami Fl (Overtown area)	400 inmates
Training and Treatment Center	6950 NW 41 St. Miami Fl (Airport area)	1300 inmates
Turner Guilford Knight Center	7000 NW 41 St. Miami Fl (Airport area)	1300 inmates
Metro West Detention Center	13850 NW 41 Street, Miami, Fl (Doral West)	3000 inmates

These locations are subject to change during the contract.

At the present time, inmate orders are delivered once a week to a centralized delivery point by the current Commissary Service provider. MDCR personnel are responsible for taking the orders and delivery of the orders to the individual cells. Inmates can place orders weekly with a limit of $75 for regular orders and $72 for prepackaged orders ($147 total weekly limit) that is subject to change. The present items offered for sale are listed in Exhibit A. Monthly sales for last fiscal year ending September 30, 2007 are listed in Exhibit B.

2.2 Commissary Operations

2.2.1 Selected Proposer shall provide commissary services to inmates housed at the County facilities with delivery at least once a week to a centralized delivery point, according to the schedule supplied by MDCR. Selected Proposer shall provide all supplies, labor and logistics necessary to satisfy schedule on time. Selected Proposer shall keep an adequate inventory to satisfy demand and shall maintain inventory outside of MDCR's facilities. Selected Proposer shall provide a sufficient variety of products in the following categories:

- Stationery and writing supplies to include greeting cards, pens, stamps and envelopes
- Bakery products
- Chips and Snacks
- Personal hygiene items and beauty aids
- Non alcoholic juices and drinks
- Radio headsets and batteries
- Personal clothing and underwear
- Over the counter medications
- Recorded or published material of educational value

2.2.2 Selected Proposer shall provide products of satisfactory quality, free from manufacturing defects. Quality and handling of products shall be in conformance with applicable Federal, State and Local laws, ordinances and regulations. Selected Proposer shall submit samples of all products for approval and MDCR reserves the right to approve or reject products. MDCR reserves the right to add items to the list that MDCR deems appropriate for the inmate population. Selected Proposer may offer products labeled as irregular for sale at a reduced price after obtaining MDCR's approval.

2.2.3 Selected Proposer shall provide separate menus for diabetic, hypertension and inmates with special dietary needs. Selected Proposer shall offer a variety of healthy items (e.g., products that have been approved by and bear the American Heart Association's Heart Healthy label).

2.2.4 Selected Proposer shall price items at or below Fair Market Value as defined by Florida State Statute 951.23 and according to the Florida Jail Model Standards. Selected Proposer shall self-inspect and conduct market surveys for pricing at least twice a year and submit its findings to MDCR. Selected Proposer may increase the approved prices no more than twice a year with MDCR's permission.

2.2.5 Selected Proposer shall fill orders with a minimum 98.5% accuracy in the aggregate. All breakage, spoilage or shrinkage occurring before delivery to the designated MDCR facility shall be the responsibility of the selected Proposer.

2.2.6 Selected Proposer shall package each inmate's order individually in a clear plastic bag as previously approved by MDCR, with a three part invoice form enclosed. MDCR Commissary Unit shall retain one copy of the invoice form for its records, one copy shall go to the MDCR Rehabilitative Office and one copy shall remain with the inmate. The invoice shall provide the following information:

- Inmate's name, jail number, facility and cell location
- Delivery date
- Item description and quantity
- Item price, sales tax and total cost
- Inmate's account balance after the sale

The invoice shall have a space to record inmate's signature acknowledging receipt of items. Invoice shall also list any rejected items along with an explanation such as insufficient funds, unauthorized product, exceeded spending limit, exceeded quantity limit and exceeded category limit.

The selected Proposer shall package items for transport and delivery so that items arrive undamaged. Hygiene items must be separated (bag within a bag) from food items.

2.2.7 Selected Proposer shall provide MDCR with item menus, scanable order forms and equipment (scanners) to take inmate orders. Order forms shall include approved items, prices and authorization from inmate for item substitution. Selected Proposer shall provide at least 2 scanners in working condition at all times. These scanners will be located in 2 different MDCR locations. Selected Proposer shall provide a method to process order entry in case of an emergency such as both scanners being unusable.

2.2.8 Selected Proposer shall provide a cost effective and expeditious system for return of orders erroneously shipped or filled. Inmates must receive satisfaction (by redelivery or credit) by close of business next working day after return. If the redelivery is caused by selected Proposer's mistake, selected Proposer shall reimburse MDCR for the cost of redelivery.

2.2.9 Selected Proposer shall handle in a cost effective and expeditious way all inmate complaints concerning Commissary services. Selected Proposer shall provide weekly reports, electronically to MDCR of all complaints and resolutions.

2.2.10 The Proposer shall provide a mechanism to communicate to the inmate population any new information such as changes in products, pricing, the unavailability of a particular product and a change in how to order a particular product, or other changes as approved by MDCR in English, Spanish and Creole. This may include posters, flyers and/or announcements sent via inmate commissary orders.

2.2.11 MDCR reserves the right to request delivery on holidays or to adapt the delivery schedule to accept delivery on alternate days to be arranged with selected Proposer. MDCR observes the following holidays: New Years Day, MLK Birthday, President's Day, Memorial Day, Fourth of

July, Labor Day, Columbus Day, Veterans Day, Thanksgiving, Friday after Thanksgiving, Christmas Eve, Christmas, and New Year's Eve. MDCR shall advise selected Proposer of alternate schedules for commissary orders due on those days, as applicable.

2.2.12 Selected Proposer shall provide special holiday items at least 30 days before the holiday and after approval by MDCR. Holidays requiring special sales are New Year's, Valentine's, Mother's and Father's Days, Thanksgiving and Christmas, as well as other religious or cultural holidays of significance to the inmate population. Holiday products (greeting cards and food items) shall reflect the religious and cultural diversity of the inmate population.

2.2.13 Selected Proposer shall advise MDCR of new products, discontinued products and substitutions. Selected Proposer shall obtain MDCR approval for any changes in the list of products provided 30 days prior to taking any action. MDCR shall not allow any product containing Trans Fats or products deemed unsafe or unsafely packaged (e.g., metal or glass packages). Selected Proposer shall adapt to any future regulations that may be enacted dealing with nutritional and health standards and eco-friendly packaging for inmate commissary.

2.2.14 Selected Proposer shall calculate, collect and remit all Sales Tax due.

2.2.15 MDCR may require the selected Proposer to prepare and provide welcome hygiene packages for newly booked inmates. MDCR shall advise selected Proposer on the contents of this package. If requested by MDCR, the selected Proposer shall invoice MDCR for the costs associated of any such packages on a monthly basis. Package price shall be negotiated between selected Proposer and MDCR and shall not exceed $3.00 adjusted for inflation. (These items are not commissionable.)

2.2.16 Selected Proposer shall prepare packages for indigent inmates. Selected Proposer shall identify indigent inmates and prepare these orders. A present criterion for indigent status is holding a balance of $2.00 or less for 30 consecutive days. MDCR shall advise selected Proposer on the contents of this package. Selected Proposer shall invoice MDCR for the costs associated of any such packages on a monthly basis. Package price shall be negotiated between selected Proposer and MDCR and shall not exceed $3.00 adjusted for inflation. (These items are not commissionable.)

2.2.17 Selected Proposer shall reimburse MDCR any additional costs other than the initial delivery costs incurred by MDCR for delivery delays plus a $500 penalty each scheduled delivery time the selected Proposer is late in making a delivery.

2.2.18 Selected Proposer shall offer at MDCR's request point of sale services at places where visitors could directly order prepackaged kits for delivery to inmates. Sales realized will be commissionable and will count against inmate indigent status. The selected Proposer shall not allow orders for, or delivery of, indigent kits to those inmates that have received pre-packaged kits purchased on their behalf by a visitor.

2.2.19 Selected Proposer shall support the sale of any item that needs necessary equipment, e.g. microwaves for hot water items, by providing the item at no charge to the County.

2.3 Personnel Background Checks

All selected Proposer's personnel involved in any capacity in this contract shall be subject to background check, including subcontractor's personnel. Selected Proposer shall conduct background checks at its cost and shall provide the results to the County. The County reserves the right to perform additional checks before granting clearance for selected Proposer's and any subcontractor's personnel to perform duties related to this

contract. MDCR reserves the right to limit access to facilities. MDCR in its sole discretion will determine which individuals are granted clearance. Background checks shall include a review of the following:

- Driving records
- Criminal records
- Bankruptcy records
- Past employers' records
- Military records
- Drug test records
- Education records

All selected Proposer's and Subcontractor's employees involved in the project may be subject to any MDCR security procedures and shall receive MDCR employee orientation and training as required by American Correctional Association (ACA) standards.

2.4 Automated Self-Service Solutions and Kiosks

2.4.1 Selected Proposer shall include at no charge to the County, a Self-Service Lobby Cashier device(s) in the lobby of each of the 5 facilities, to meet the demand for service, as determined by MDCR which shall handle Cash, Credit, and Debit Card transactions. The device must be integrated with the selected Proposer's own inmate banking software used on the project. The selected Proposer and not MDCR shall be responsible for the handling of cash, credit or debit transactions. MDCR staff will only reconcile deposits to inmate accounts against electronic money transfers received in the MDCR bank.

2.4.2 Selected Proposer shall provide housing unit Kiosks at no charge (estimated that a minimum of 48 and as many as 96 will be required) that allows inmates to access their account history, place commissary orders, appointment requests, on-line calendar, bulletin board information, phone account history, file grievances and any other information pertinent to the services being provided by the selected Proposer. The responses by MDCR staff shall be available electronically on these kiosks to inmates who filed grievances. Kiosks shall be accessible in multiple languages including English, Spanish and Creole. Any software offered by the Proposer shall interface with existing MDCR systems and must conform to the current conventions used by MDCR's Information Systems Bureau (ISB) and the County's Enterprise Technology Services Department (ETSD).

2.4.3 Kiosks shall be made of steel, no larger than 21x21 inches, wall or floor mounted, locked, with no moving parts and an industrial glass touch screen. The kiosks shall be made of non-breakable parts that could not be fashioned into weapons. Selected Proposer shall have the wiring for kiosks approved by MDCR and ETSD.

2.4.4 Kiosks shall be operational 24 hours per day, except for routine service and maintenance.

2.4.5 Selected Proposer shall perform all necessary service and maintenance of the kiosks in a timely fashion. Any Kiosk may not be out of service for more than 24 hours. In the event the necessary service will require the Kiosk to be out of service more than 24 hours, the selected Proposer shall provide a substitute kiosk or make alternative arrangements so that inmates will be able to place commissary orders at their normal schedule or check on information normally available on the kiosks.

2.5 Automated Payment and Deposit Services

2.5.1 The selected Proposer shall provide a system for automated payment and deposit options which shall be available to any visitor at any of the facilities. The proposed payment and deposit

options shall be fully integrated with the selected Proposer's banking (accounting) System. Funds deposited during the day from all sources shall be electronically transferred nightly to Inmate Trust Fund Account and deposited directly to individual inmate accounts. Deposits shall be added to General Ledger and Bank Reconciliation file.

2.5.2 Minimum options for deposits shall include online, phone, and in-person by use of a Kiosk. Selected Proposer shall accept major credit cards, debit cards and cash without liability to the County. Selected Proposer shall resolve any credit card disputes and compensate the County for any losses the County may incur as a result of disputed payments.

2.5.3 Selected Proposer's system shall allow for deposits to be designated for an inmate's telephone account.

2.5.4 Selected Proposer's system shall allow deposits for cash bond payments at the lobby kiosks via a touch screen menu. Selected Proposer may elect to accept transactions or subcontract the function with a provider of this service. Subcontractor shall be subject to approval by the County.

2.5.5 Selected Proposer may assess a transaction fee for depositing money. These fees must first be approved by MDCR. Fees collected from these transactions shall be treated as sales and are commissionable.

2.6 Computer System Requirements

The selected Proposer shall provide, operate, maintain the computer system (the "System"), including the hardware and software, necessary to provide these services. Changes or deviations from the hardware and software listed below must be submitted for approval to MDCR's ISB.

2.6.1 Operating System

The following are the preferred operating systems:

- Windows 2003 Enterprise edition
- AIX 5,3 or greater
- Z/Linux SUSE SLES 9 or greater
- Red Hat Linux AS 4 or greater
- VMware: ESX3.5 with V Motion technology enabled using fiber only technology
- Oracle Linux
- Mainframe

2.6.2 Database

The following are the preferred operating databases:

- Oracle Enterprise Edition Release 10.2.0.3 Grid Certified System (Enterprise Solution).
- MSSQL 2005 Enterprise 64 bit (allowed for small applications)
- IBM DB2 UDB Versions 8 and 8

2.6.3 Hardware

Selected Proposer shall provide MDCR with the hardware necessary for these services as specified in Appendix A at no charge to the County. The following are the preferred servers:

- IBM A Series mainframe
- HP model servers with Integrated Lights Out (ILO)

- HP blade server with VIO option
- Dell servers with VMware virtualization software
- HP Proliant dual core servers
- IBM pSeries servers (model 9119-p595 and 9119-p570) – (P520 for IVR)

At the end of the contract, any equipment that the selected Proposer has installed at an MDCR facility shall become property owned by the County and remain on site.

2.6.4 Network

The following are the network requirements:

- Network shall run in updated Server 2003.
- All machines and users shall be registered with miamidade.gov active directory.
- Selected Proposer installed anti-virus provided by the County, presently Trend Micro.
- Contractor will coordinate and receive approval from MDCR Information Systems Bureau for all hardware and software installations.

2.7 Security Features

2.7.1 The System shall limit access to approved Miami-Dade users who are members of Miami-Dade County.gov network.

2.7.2 The System shall require a password containing a minimum of 6 characters and using a combination of both Alpha and numerical characters.

2.7.3 Passwords shall have a maximum duration of 180 days. System will prompt users to change passwords at least twice a year.

2.7.4 The County's designated Administrator shall have the ability to limit users to certain transactions and certain terminals.

2.7.5 The County's designated Administrator shall have the ability to limit transactions by physical location.

2.7.6 System shall terminate sessions after 5 minutes of inactivity and require user to log in again.

2.7.7 System shall provide biometric identification of users.

2.8 Software Requirements

2.8.1 The selected Proposer's system for this project shall communicate with the Criminal Justice Information System (CJIS) via protocol approved and supported by ETSD. The system shall receive data from CJIS in a continuous real-time one way basis. Information received shall include name, race, sex, DOB, jail number, Criminal Identification Number (CIN), old CIN, booking date and time, cell location, cell changes, inmate classifications, inmate classification changes, and release date and time.

The interfaces supported by the CJIS are:

- Web services with XML output

- Booking interface: Web services with WML only
- Housing Update: FTP batch files to a Web-enabled or network FTP server. These files can be delimited or fixed column.

2.8.2 The software and hardware shall be supported by the selected Proposer's own employees or its Subcontractor's employees. All technical support personnel are included in the personnel background checks required.

2.8.3 The selected Proposer shall provide the latest available version of the software being proposed and shall provide free upgrades as the software provider makes them available and debugged.

2.8.4 Selected Proposer shall provide training to MDCR at start of the contract at the detention facilities including but not limited to user seminars, one-on-one hands on training, audiovisual and online tutorial training.

2.8.5 Access to the database shall be limited to approved selected Proposer's support personnel to protect the integrity of the data structure and accounting principles. All of the selected Proposer's personnel working on the MDCR project shall execute a confidentiality agreement with MDCR.

2.8.6 Selected Proposer shall provide a complete implementation plan for MDCR approval. Implementation plan shall include schedule for delivery and installation of hardware and software. Deadline for implementation shall not extend beyond 90 days past the start date of the contract.

2.8.7 Selected Proposer shall provide a complete conversion plan from current accounting database and application. Conversion plan shall include a testing plan. Selected Proposer shall run parallel or partial parallel testing using its installed equipment. The County anticipates a 90-180 day transition period in which it may be necessary to run the selected Proposer's system alongside the current system.

2.8.8 Selected Proposer shall provide complete data backup capabilities to include on-site and off-site backups.

2.8.9 The selected Proposer's System shall be redundant to minimize downtime.

2.8.10 The selected Proposer's System shall restrict Commissary sales based upon medical needs, security needs and inmate disciplinary reasons.

2.8.11 The selected Proposer's System shall allow both MDCR and the inmates to check on the status of any complaints.

2.8.12 At least twice a year, the selected Proposer shall provide a report to MDCR advising of any new trends and technological enhancements in the industry.

2.9 Software Inmate Accounting (Banking) Functionality

The selected Proposer shall own the rights to all installed software and also own licenses allowing installing, supporting, and modifying the software.

2.9.1 The System shall provide an accurate banking system to keep live accurate track of each individual inmate's financial balance and transactions. Transactions shall include but not be limited to:

- Funds collected at time of booking
- Deposits received
- Deposits from earnings outside (e.g., Payroll checks) and earnings while incarcerated (e.g., Inmate Payroll)
- Commissary refunds
- Fees assessed by facility and charges incurred (e.g., subsistence fees, medical services, commissary charges)
- Charges assessed by the courts
- Releases authorized by inmate
- Payment of cash bonds
- Final release of funds to inmate upon inmate release and release of inmate property
- Acceptance of Inmate Property
- Indigent Commissary

2.9.2 The System shall monitor inmate accounts to detect unusual activities and provide e-mail or other alerts to MDCR when inmate accounts exceed a certain balance or when large electronic fund transfer deposits are received from multiple locations or on an unusual schedule that suggests potential money laundering activities.

2.9.3 The System shall allow MDCR personnel to apply holds and freeze accounts.

2.9.4 The System shall allow for the transfer of accounts from and to other facilities in other jurisdictions.

2.9.5 The System shall identify accounts based on CIN number and link/unlink those accounts. Identification shall occur within 48 hours of booking.

2.9.6 The System shall support more than 40 concurrent users, not including kiosks.

2.9.7 The System shall perform all transactions live, online and shall provide a paperless audit trail. MDCR users shall have the ability to obtain hard copies of all reports and transactions. (See Appendix "A" for number of printers.)

2.9.8 The System shall provide a complete General Ledger Accounting with automatic dual entry. The System shall allow MDCR to run a Trial Balance, General Ledger reports, Ledger Accounts reports, and Individual inmate's reports at any time for any specified date requested. Dual entry posting shall be automatic; System shall reject transactions not posting a debit and a credit. General Ledger shall always be in balance.

2.9.9 The System shall allow the users to make closing of period adjustments (monthly and yearly).

2.9.10 The System shall allow the users to track several bank accounts (at least 3) and shall also offer a bank reconciliation module. System shall allow users to reconcile bank accounts monthly or at any desired time during the month.

2.9.11 The System shall provide automatic printing of Release Media (MICR check writing and money order or debit card) and a positive pay module compatible with System used by the County's chosen bank. The System shall perform multiple releases in one check when inmates are transferred to other facilities in other jurisdictions.

2.9.12 The System shall accept and read scanned forms for entry of commissary sales. Selected Proposer shall provide and maintain scanners needed for this function. The System shall also accept scanned entries for medical charges and other fees assessed by the County.

2.9.13 The System shall not charge inmates for "out of stock items". Selected Proposer shall keep track of inventory to avoid fictitious sales and generating unnecessary extra work.

2.9.14 The System shall provide a cash drawer balancing system for all cash transactions, including intake and release windows at the Property Room, Finance Office and Release Desk. Selected Proposer shall provide at least 4 cash boxes to accept bills and coins in intake locations to improve accuracy and security of cash handling.

2.9.15 The System shall allow users to readily request reports from information contained in the database, including demographic data.

2.9.16 The System shall identify inactive accounts and segregate them. The selected Proposer shall prepare a yearly report to State of Florida to comply with Abandoned Funds Laws.

2.9.17 The System shall keep accounts and run financial reports based on different segments with special Accounting needs (e.g., Community Corrections needs a system to calculate fees, Jail Industries needs inmate payroll capabilities, neither one of these segments are subject to subsistence fees).

2.9.18 The System, in conjunction with CJIS, will import the security classification from CJIS and shall classify inmates according to security and health criteria established by the County and restrict commissary item sales according to that criterion.

2.9.19 The System shall allow overwrites to booking information and correction of errors by MDCR Supervisors in the Finance Department and Property Rooms.

2.9.20 The System shall allow collecting and storing inmate signatures for future identification and verification of transactions.

2.9.21 The System shall allow transfers between accounts by authorized personnel only.

2.9.22 The System shall keep separate track of the accounting for prepackaged items sold to inmates and regular commissary orders. Add backs (refunds for these categories) shall also be segregated.

2.9.23 The System shall allow for biometric identification of inmates.

2.9.24 Selected Proposer shall provide two on-site technicians with extensive knowledge of the hardware and software to service the County and be on call to support the operation 24 hours a day, 7 days a week. The technicians shall respond within 30 minutes and resolve the problem within two hours. If the problem is not resolvable within two hours, the technicians shall provide a work plan and schedule acceptable to MDCR for resolving any outstanding issues. At least one of the technicians shall be certified by Academy MCSE 2008+Security Boot Camp (BOOTMCSE03S). Both Technicians shall be familiar with all aspects of the operating system.

2.9.25 The selected Proposer shall provide virtual computing to eliminate downtime and recover quickly from unplanned outages with the ability to securely backup and migrate entire virtual environments with no interruption in service.

2.9.26 System shall establish a second account earmarked for payment of cash bonds. Authorized personnel from MDCR shall be able to transfer funds to and from inmate regular and bond accounts.

2.9.27 MDCR shall be able to view any invoice electronically and print out a copy.

2.10 Property Module

The selected Proposer shall provide a Property Module to keep an accurate inventory of inmate property left with the Property Clerk. This module shall provide for online inquiries to include complete history and shall report by location, dates and individual inmates.

2.10.1 Module shall record all inmate property at time of booking, secondary intake, deletions and additions.

2.10.2 Module shall make provisions to itemize inmate property at time of release or through other authorization.

2.10.3 Module shall interface with mug shot system to keep pictures of inmates and inventory of their property.

2.10.4 Module shall identify items by property categories not limited to clothing, documents, accessories, jewelry, coins, and miscellaneous items.

2.10.5 Module shall identify the following items:
- Storage location as determined by MDCR
- Employee performing transactions
- Individual bringing additional property or monies
- Person receiving property
- Abandoned property

2.10.6 Module shall have purging capability and shall segregate valuable property such as jewelry and electronics.

2.11 Additional Modules

2.11.1 The selected Proposer shall provide an Inmate Payroll Module, with automatic posting to inmate accounts after user enters hours worked by inmate and authorized hourly rate.

2.11.2 The selected Proposer shall provide a House Arrest and Monitoring Accounting Module, keeping track of monies deposited for that purpose and allowing transfer back and forth from the main inmate bank account. Module shall calculate amounts due by inmate based on inputted rates and shall track collections.

2.11.3 The selected Proposer shall provide a Cash Bond Module, to accept payment and do automatic transfers from Inmate Commissary account. Module shall keep track of bond deposits and disbursements and cash bond escrow account.

2.11.4 The selected Proposer shall provide a Subsistence Fees (pay per stay) Module with automated entry (on key punch) and the ability to keep track of receivables owed to MDCR by the inmate. The Module shall allow users to charge inmates owing monies to the County a percentage of received deposits. The County shall determine the percentage used and may change the percentage as desired. The County shall also establish criteria for prioritizing the allocation of funds collected and allow exceptions to charges according to criteria established by the County.

2.11.5 The selected Proposer shall provide an Indigent Module to properly identify indigent inmates and assign indigent packs according to criteria provided by the County.

2.11.6 System shall provide a Medical Fees Module for automatic input of medical fees, preferably scanning. Module shall be flexible to include future charges for services to inmates.

2.12 Reporting Requirements

2.12.1 The selected Proposer shall provide a monthly report to MDCR. The reports shall be delivered electronically in order to provide a paperless environment. The reports shall also be available, at the County's request, quarterly, yearly and on demand. The report shall include:

- Commissary sales by inmate, facility, locations, product categories and lines and any other criteria captured in the Inmate Banking System and Commissary Modules
- Complaint and resolution summary by inmate and location
- Medical fee collections
- Subsistence fee collections
- Inmate payroll
- Inmate property activity
- Bank transactions
- Detailed general ledger
- Abandoned property and abandoned funds
- Web based reports: inmate account history, inmate property history and general ledger
- Invoices for welcome hygiene packages and indigent inmate packages

2.13 Annual Audit

Pursuant to Florida State Statute 951.23, MDCR will have an annual audit conducted of the Selected Proposer's fiscal management of the Commissary by a third party. The selected Proposer shall pay the costs of the audit as well as the costs to bring the selected Proposer's services and management of the Commissary into compliance with the recommendations of the audit. MDCR shall select the auditor(s) of its choice.

2.14 Additional Services

The following "Additional Services" are at the County's sole discretion. These services are in addition to, and priced separately from, the above required services.

2.14.1 At the present time, the current contractor hosts the site with the servers being physically located at MDCR. The County reserves the right to request from the selected Proposer updates to services and technology as they become available and become the standard for the industry(e.g., web based applications). A web based application shall be implemented by the selected Proposer at no cost to the County and be fully operational before the end of the initial 4 year period of the contract. The selected Proposer shall report to MDCR new trends and technological enhancements at least twice per year.

2.14.2 At the present time, identification of inmates is accomplished by visual means and manual signatures. MDCR reserves the right to switch to electronic identification and signature collection. Selected Proposer shall facilitate the switch. Costs of equipment and programming changes shall be negotiated between MDCR and selected Proposer at the time the request is made.

2.14.3 Selected Proposer shall provide additional inmate kiosks if required by MDCR for commissary entries, inquiries and banking services at any new facility added or an existing facility remodeled by MDCR that will alter the location of inmates. Costs of equipment and programming changes shall be negotiated between MDCR and selected Proposer at the time of installation. Selected Proposer shall install additional kiosks at existing facilities or at new or remodeled facilities if required by MDCR.

2.15 Optional Services

The following "Optional Services" are services that the County may or may not request from the selected Proposer. The County is requesting prices for these Services in order to determine if the County will request these services.

At the present time, inmate orders are delivered once a week to a centralized delivery point by the current Commissary Service provider. MDCR personnel are responsible for taking the orders and delivering the orders to the individual cells. MDCR may elect to have the selected Proposer deliver the orders directly to each inmate's cell.

3.0 RESPONSE REQUIREMENTS

3.1 Submittal Requirements

In response to this Solicitation, Proposer shall **return the entire completed Proposal Submission Package** (see attached). Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required.

Proposals that do not include the required documents may be deemed non-responsive and may not be considered for contract award. The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

4.0 EVALUATION PROCESS

4.1 Review of Proposals for Responsiveness

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation. A responsive proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

4.2 Evaluation Criteria

Proposals will be evaluated by an Evaluation/Selection Committee which will evaluate and rank proposals on criteria listed below. The Evaluation/Selection Committee will be comprised of appropriate County personnel and members of the community, as deemed necessary, with the appropriate experience and/or knowledge, striving to ensure that the Evaluation/Selection Committee is balanced with regard to both ethnicity and gender. The criteria are itemized with their respective weights for a maximum total of one hundred (100) points per Evaluation/Selection Committee member.

Technical Criteria	Points
1. Proposer's relevant experience, qualifications and past performance; relevant experience and qualifications of subcontractors; and relevant experience and qualifications of key personnel, including key personnel of subcontractors; that will be assigned to this project	20
2. Proposer's approach to providing the services requested in this Solicitation to include the hardware, software, quality control, items and their prices to be offered, implementation/conversion plan and the training program.	45
3. Proposer's proposed commission	35

4.3 Oral Presentations

Upon completion of the criteria evaluation indicated above, rating and ranking, the Evaluation/Selection Committee may choose to conduct an oral presentation with the Proposer(s) which the Evaluation/Selection Committee deems to warrant further consideration based on the highest rated proposal providing the highest quality of service to the County; scores in clusters; significant breaks in scoring; and/or maintaining competition. (See Form A-2 regarding registering speakers in the proposal for oral presentations.) Upon completion of the oral presentation(s), the Evaluation/Selection Committee will re-evaluate, re-rate and re-rank the proposals remaining in consideration based upon the written documents combined with the oral presentation.

4.4 Price Evaluation

The price proposal will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The price proposal evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

4.5 Local Preference

The evaluation of competitive solicitations is subject to Section 2-8.5 of the Miami-Dade County Code, which, except where contrary to federal or state law, or any other funding source requirements, provides that preference be given to local businesses (see Form A-4). If, following the completion of final rankings by the Evaluation/Selection Committee, a non-local Proposer is the highest ranked responsive and responsible Proposer, and the ranking of a responsive and responsible local Proposer is within 5% of the ranking obtained by said non-local Proposer, then the Evaluation/Selection Committee will recommend that a contract be negotiated with said local Proposer.

4.6 Negotiations

The County may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

The Evaluation/Selection Committee will evaluate, score and rank proposals, and submit the results of their evaluation to the County Manager. The County Manager or his designee will determine with which Proposer(s)

the County shall negotiate, if any, taking into consideration the Local Preference Section above. In his sole discretion, the County Manager or his designee may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, or may request Best and Final Offers.

Notwithstanding the foregoing, if the County and said Proposer(s) cannot reach agreement on a contract, the County reserves the right to terminate negotiations and may, at the County Manager's or his designee's discretion, begin negotiations with the next highest ranked Proposer(s). This process may continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

4.7 Contract Award

Any negotiated contract, as a result of the Solicitation, will be submitted to County Manager or designee for approval and may be submitted to the Board of County Commissioners for their approval. **All Proposers will be notified in writing when the County Manager or designee makes an award recommendation.** The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the County to be in the best interest of the County. The County's decision to make the award and which proposal is in the best interest of the County shall be final.

4.8 Rights of Protest

A. A recommendation for contract award or rejection of all proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the County Code, as amended, and as established in Administrative Order No. 3-21.

B. A written intent to protest shall be filed with the Clerk of the Board and mailed to all participants in the competitive process and to the County Attorney within three (3) County workdays of the filing of the County Manager's recommendation. This three day period begins on the County workday after the filing of the County Manager's recommendation. Such written intent to protest shall state the particular grounds on which it is based and shall be accompanied by a filing fee as detailed in Para C below.

C. The written intent to protest shall be accompanied by a non-refundable filing fee, payable to the Clerk of the Board, in accordance with the schedule provided below:

Award Amount	Filing Fee
$25,000-$250,000	$500
$250,001-$500,000	$1,000
$500,001-$5 million	$3,000
Over $5 million	$5,000

D. For award recommendations greater than $250,000, the County's recommendation to award or reject will be immediately communicated (via mail, fax or e-mail) to all participants in the competitive process and filed with the Clerk of the Board.

E. For award recommendations from $25,000 to $250,000, each County workday, as appropriate, recommendations to award or reject will be posted in the lobby of the Stephen P. Clark Center, located at 111 NW 1st Street, Miami, FL. Participants may also call the Awards Line at 305-375-4724, or 800-510-4724, or the contact person as identified on the cover page of this Solicitation.

Any question, issue, objection or disagreement concerning, generated by, or arising from the published requirements, terms, conditions or processes contained or described in the solicitation document shall be deemed waived by the protester and shall be rejected as a basis for a protest unless it was brought by that Proposer to the attention, in writing, of the procurement agent, buyer, contracting officer or other contact person in the County department that issued the solicitation document, at least two working days (not less than 48 hours) prior to the hour of the due date for proposal submission.

5.0 TERMS AND CONDITIONS

The anticipated form of agreement is attached. The terms and conditions summarized below are of special note and can be found in their entirety in the agreement:

A. Vendor Registration
Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. Effective June 1, 2008, the new Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form), must be completed. The Vendor Registration Package, including all affidavits can be obtained by downloading from the DPM website at www.miamidade.gov or from the Vendor Assistance Unit at 111 N.W. 1st Street, 13th Floor, Miami, FL. The recommended Proposer shall affirm that all information submitted with its Vendor Registration Package is current, complete and accurate, at the time they submitted a response to the Solicitation, by completing an Affirmation of Vendor Affidavit form.

B. Insurance Requirements
The Contractor shall furnish to the County, Department of Procurement Management, prior to the commencement of any work under any agreement, Certificates(s) of Insurance which indicate insurance coverage has been obtained that meets the stated requirements.

6.0 ATTACHMENTS

Form of Agreement
Appendix A-Hardware to be Provided to the County
Exhibit A-Commissary Items for Sale
Exhibit B-Commissary Sales for FYE September 30, 2007
Proposal Submission Package

(This is the form of Agreement the County anticipates awarding to the selected Proposer.)

Inmate Commissary and Banking Services
Contract No. RFP649

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between _____, a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide _____, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated _____, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such Commissary Services, Computer System, Accounting Software, Cash Management Software, Hardware, System Maintenance Services and certain other services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

b) The words "Contract Date" to mean the date on which this Agreement is effective.

c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative designated to manage the Contract.

d) The word "Contractor" to mean _____ and its permitted successors and assigns.

e) The word "Days" to mean Calendar Days.

f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.

g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.

h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.

i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Project.

k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.

l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.

m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of

precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.

c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.

d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.

c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.

d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.

e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on

policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall be for the duration of four (4) years. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for six, one-year periods. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County
Corrections and Rehabilitation Department
2525 N.W. 62nd Street, Room 3250
Miami, FL 33147
Attention: Sheila Siddiqui, Division Chief
Phone: (786)263-6299
Fax: (786)263-6134

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5548
Fax: (305) 375-2316

(2) To the Contractor

Attention:
Phone:

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the commission the Contractor will pay to the County while providing the Work and Services to be performed under this Contract. The commission payable to the County shall be _____ percent (__%). The County shall pay the Contractor, pursuant to Price Schedule, Appendix B, for welcome hygiene packages, indigent packages, Additional Services, and Optional Services, as defined in the Scope of Services. The County shall have no obligation to pay the Contractor any sum in excess of this amount except for or a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. COMMISSION RATE

Commission rate shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentives such as additional commissions or equipment to the County at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor will charge the applicable inmate's account for delivered items and will charge the County for welcome hygiene packages, indigent packages, Additional Services, and Optional Services, as defined in the Scope of Services. At the end of each month, by the fifth of the following month, the Contractor shall provide the monthly report for the preceding month and transfer to the County all proceeds received from inmate sales and other revenue sources applicable to this Contract. The County shall make all the required disbursements (i.e., sales tax), retain the commissions due the County, retain any amounts due the County by the Contractor under the terms of this Contract, such as penalties, and transfer to the Contractor the remainder of the proceeds along with any amount due from the County. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later that sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County
_____
_____
_____
Attention: _____

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to the Department of Procurement Management, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.

2. Public Liability Insurance on a comprehensive basis in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**

3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws

of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the County.

NOTE: **MIAMI-DADE COUNTY CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.**

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and

conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.

d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.

e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.

f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall

at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.

c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.

d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.

e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the

County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.

c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to County Ordinance No. 03-2, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.

c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.

d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within

each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.

b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the

County:

i. stop work on the date specified in the notice ("the Effective Termination Date");

ii. take such action as may be necessary for the protection and preservation of the County's materials and property;

iii. cancel orders;

iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;

v. take no action which will increase the amounts payable by the County under this Agreement; and

e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:

i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.

f) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:

i. the Contractor has not delivered Deliverables on a timely basis.

ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;

iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;

iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;

v. the Contractor has failed to obtain the approval of the County where required by this Agreement;

vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;

vii. the Contractor has failed in the representation of any warranties stated herein.

b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:

i. treat such failure as a repudiation of this Agreement;

ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.

c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

a) lost revenues;

b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including procurement and administrative costs; and,

c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's

default. The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.

b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.

c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial

information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.

c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the

County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.

c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no

effect.

ARTICLE 31. VENDOR REGISTRATION AND FORMS/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

1. *Miami-Dade County Ownership Disclosure Affidavit* (Section 2-8.1 of the County Code)
2. *Miami-Dade County Employment Disclosure Affidavit* (Section 2.8-1(d)(2) of the County Code)
3. *Miami-Dade Employment Drug-free Workplace Certification* (Section 2-8.1.2(b) of the County Code)
4. *Miami-Dade Disability and Nondiscrimination Affidavit* (Section 2-8.1.5 of the County Code)
5. *Miami-Dade County Debarment Disclosure Affidavit* (Section 10.38 of the County Code)
6. *Miami-Dade County Vendor Obligation to County Affidavit* (Section 2-8.1 of the County Code)
7. *Miami-Dade County Code of Business Ethics Affidavit* (Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code)
8. *Miami-Dade County Family Leave Affidavit* (Article V of Chapter 11 of the County Code)
9. *Miami-Dade County Living Wage Affidavit* (Section 2-8.9 of the County Code)
10. *Miami-Dade County Domestic Leave and Reporting Affidavit* (Article 8, Section 11A-60 11A-67 of the County Code)
11. *Subcontracting Practices* (Ordinance 97-35)
12. *Subcontractor/Supplier Listing* (Section 2-8.8 of the County Code)
13. *Environmentally Acceptable Packaging* (Resolution R-738-92)
14. *W-9 and 8109 Forms* (as required by the Internal Revenue Service)
15. *FEIN Number or Social Security Number* - In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:
    - Identification of individual account records
    - To make payments to individual/Contractor for goods and services provided to Miami-Dade County
    - Tax reporting purposes
    - To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records
16. *Office of the Inspector General* (Section 2-1076 of the County Code)
17. *Small Business Enterprises* The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.
18. *Antitrust Laws* By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information,

please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under $1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and

procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.

b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

c) Environmental Protection Agency (EPA), as applicable to this Contract.

d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.

f) Miami-Dade County Code Section 10-38 "Debarment".

g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.

h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or

prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:

   i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or

   ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.

c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.

d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.

e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and

b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in

accordance with, the laws of the State of Florida.

ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)

a) User Access Fee

Pursuant to Miami-Dade County Budget Ordinance No. 03-192, this Contract is subject to a user access fee under the County User Access Program (UAP) in the amount of two percent (2%). All sales resulting from this Contract, or any contract resulting from this solicitation and the utilization of the County contract price and the terms and conditions identified herein, are subject to the two percent (2%) UAP. This fee applies to all contract usage whether by County Departments or by any other governmental, quasi-governmental or not-for-profit entity.

The Contractor providing goods or services under this Contract shall invoice the contract price and shall accept as payment thereof the contract price less the 2% UAP as full and complete payment for the goods and/or services specified on the invoice. The County shall retain the 2% UAP for use by the County to help defray the cost of the procurement program. Vendor participation in this invoice reduction portion of the UAP is mandatory.

b) Joint Purchase

Only those entities that have been approved by the County for participation in the County's Joint Purchase and Entity Revenue Sharing Agreement are eligible to utilize or receive County contract pricing and terms and conditions. The County will provide to approved entities a UAP Participant Validation Number. The Contractor must obtain the participation number from the entity prior to filling any order placed pursuant to this section. Contractor participation in this joint purchase portion of the UAP, however, is voluntary. The Contractor shall notify the ordering entity, in writing, within 3 work days of receipt of an order, of a decision to decline the order.

For all ordering entities located outside the geographical boundaries of Miami-Dade County, the Contractor shall be entitled to ship goods on an "FOB Destination, Prepaid and Charged Back" basis. This allowance shall only be made when expressly authorized by a representative of the ordering entity prior to shipping the goods.

The County shall have no liability to the Contractor for the cost of any purchase made by an ordering entity under the UAP and shall not be deemed to be a party thereto. All orders shall be placed directly by the ordering entity with the Contractor and shall be paid by the ordering entity less the 2% UAP.

c) Contractor Compliance

If a Contractor fails to comply with this Article, that Contractor may be considered in default by the County in accordance with Article 24 of this Contract.

ARTICLE 40. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor	Miami-Dade County
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____
Attest: _____ Corporate Secretary/Notary Public	Attest: _____ Clerk of the Board
Corporate Seal/Notary Seal	Approved as to form and legal sufficiency _____ Assistant County Attorney

APPENDIX A

Hardware to be Provided to the County by the Selected Proposer

Present Server upgrade
EMC CX 300 Upgrade:
Dell Quotation: 409437780
Ultapoint 2 Gb Disk Array Enclosure DAE2P
2 Year Support.

Dell Poweredge 2950:
Dell Quotation: 409447089 (Alter memory to half) ********
2 PE2950 Servers Memory Upgrade (Saving Memory)
8 Gb 677 Mhz (2x4 GB) Dual Ranked.

New Dell Equipment for Virtualization
Dell Power Vault
Dell Quotation: 409452008
Power Vault MD1000 – Backup/Standby System.
3 Year Support.

Additional Servers for Virtualization
Dell Quotation: 409440567
4 Dell Server, each equipped with Dual Sockets /32Gb Ram – Quad Core Xeon Call Regarding 2X6Mb

Vmware License Upgrade

Vmware Licence Addition

Consolidate Backup Addition Software: vRangepro

Table Laptop for Virtualization
10 X Latitude XT:

Department Desktops
40 OptiPlex 755

12 Laser Printers, Model to be Determined at Inception of Contract. (app $400 each)

6 Fujitsu Scansnap Scanners, Model to be Determined atInception of Contract (app $500 each)

EXHIBIT "A"
COMMISSARY ITEMS FOR SALE

ITEM_DESC	ITEM_PRICE	TAX_RATE
BOOK OF TEN STAMPS	4.10	0.00000
EAR BUDS	4.00	0.07000
TUBE SOCK (ONE SIZE FITS	1.35	0.07000
GPX CLEAR AM/FM W/EARBUDS	17.95	0.07000
CONTACT LENS CASE	3.85	0.07000
HOLY BIBLE	12.00	0.07000
HOLY KORAN	16.96	0.07000
S.S. ORANGE BREAKFAST DRI	0.35	0.07000
S.S. TEA W/LEMON	0.35	0.07000
S.S. FRUIT PUNCH	0.35	0.07000
S.S. LEMONADE	0.35	0.07000
SUGAR PACKET SINGLE	0.05	0.07000
CC JALAPENO NACHO CHS DIP	1.10	0.07000
ONION DIP 3.5OZ	1.10	0.07000
TOP EMB CRACKERS	1.59	0.07000
PREMIUM CHICKEN BREAST	3.00	0.07000
SS PEANUT BUTTER	0.60	0.07000
SS CHEDDAR SQUEEZERS	0.75	0.00000
SS JALAPENO SQUEEZERS	0.75	0.00000
GRAPE JELLY 1 OZ.	0.50	0.07000
SUGAR THIN PACKET	0.05	0.07000
6 GUN BEEF STICK	0.55	0.00000
BEEF & CHEESE STICK	0.50	0.00000
LIL CHUB HIGH HEAT 1.63oz	0.99	0.07000
SUMMER SAUSAGE PEPPERONI	0.99	0.07000
PICKLE (MILD)	0.80	0.07000
PICKLE (HOT)	0.80	0.07000
(EA) GRANOLA BAR CHOC CHP	0.60	0.07000
SL OATMEAL SANDWICH CAKES	2.02	0.07000
CHIPS N CREME COOKIES	1.65	0.07000
DEVILS FOOD CAKES 10/BOX	1.75	0.00000
FUDGE STRIPS CAKES 10/BOX	1.65	0.00000
SL SWISS RLLS BX-6 TWN PK	2.02	0.07000
SL PEANUT BUTTER WAFERS	2.25	0.07000
HONEY BUN	0.55	0.00000
SL DUNKING STICKS 6/BOX	2.25	0.07000
BUTTER COOKIE 12 OZ.	2.00	0.07000
SL VANILLA WAFER 16OZ	2.10	0.07000
SALTINE CRACKERS	1.99	0.07000
SL CHOCOLATE CHIPS 16OZ	2.10	0.07000
SL ICED OATMEAL 16OZ	2.10	0.07000
HOT FRIES (ANDY CAPP)	0.75	0.07000
SALSA FRIES (ANDY CAPP)	0.55	0.07000
BROWNIE	0.79	0.00000
BBQ CORN CHIPS	0.55	0.07000
BABY RUTH	0.96	0.07000
C.A. BBQ CORN CHIPS 12OZ.	2.00	0.07000
CA ROUND TORTILLA CHIPS	2.00	0.07000
KEEFE 10OZ NACHO CHIPS	1.65	0.07000
KEEFE 13OZ CORN CHIPS	1.85	0.07000
C.A. CHEESE CRUNCH 11OZ.	2.00	0.07000
SALT & SOUR CHIPS	0.55	0.07000
HOT CHIPS 1.5 OZ	0.85	0.07000
1 EACH 1ST CLASS STAMP	0.41	0.00000
SZ 11 LG. WOMENS PANTIES	2.76	0.07000
SZ 10 WOMENS PANTIES	2.76	0.07000
SZ 8 WOMENS PANTIES	2.76	0.07000
SZ 6 WOMENS PANTIES	2.76	0.07000
SNICKERS BAR	0.94	0.07000
M&M PLAIN	0.94	0.07000
M&M PEANUT	0.94	0.07000
BUTTERFINGER	0.94	0.07000
NACHO TORTILLA CHIPS	0.85	0.07000
WINTERGREEN MINTS	0.60	0.07000
POTATO CHIPS 1.0 OZ	0.70	0.07000
CORN CHIPS	0.55	0.07000

MEN BRIEFS MED	3.15	0.07000
MEN BRIEFS LRG	3.35	0.07000
MED T-SHIRT	4.75	0.07000
LG T-SHIRT	4.75	0.07000
XLG T-SHIRT	5.00	0.07000
SMALL STAMPED ENVELOPE	0.50	0.00000
LARGE STAMPED ENVELOPE	0.53	0.00000
SKITTLES	0.94	0.07000
PAYDAY	0.94	0.07000
ZERO BAR	0.94	0.07000
MED BOXER SHORTS WHITE	3.99	0.07000
LG BOXER SHORTS WHITE	4.25	0.07000
XLG BOXER SHORTS WHITE	4.25	0.07000
XXLG T-SHIRT	5.00	0.07000
SOUR FRUIT BALLS 4.25OZ	0.99	0.07000
ROOTBEER BARRELS	0.80	0.07000
LEMON DROPS	0.80	0.07000
SUGAR FREE WILD FRUIT 1.7	0.99	0.07000
SPICY CAJUN MIX 3.5OZ	1.25	0.07000
HEALTH MIX	1.20	0.00000
TROPICAL BLEND	1.25	0.07000
DIBGY ALLSTARS 3.75OZ.	0.99	0.07000
ATOMIC FIRE BALLS	0.80	0.07000
OREO SANDWICH COOKIES	0.75	0.07000
CORNNUTS BBQ	0.75	0.07000
MEN BRIEFS SMALL	3.15	0.07000
MEN BRIEFS XL	3.35	0.07000
SM BOXER SHORTS WHITE	3.99	0.07000
CARAMEL POPCORN 3.5 OZ	1.35	0.07000
MILKY WAY CANDY BAR	0.94	0.07000
ALMOND JOY	0.94	0.07000
GINGER SNAPS 14OZ	2.48	0.07000
HOT SPICY PORK RINDS	0.99	0.07000
HIC ORANGE DRINK 6.75 OZ	0.45	0.07000
HIC GRAPE DRINK 6.75 OZ	0.45	0.07000
HIC FRUIT PUNCH 6.75 OZ	0.45	0.07000
CHOCOLATE MARSHMALLOW PIE	0.60	0.07000
VANILLA MARSHMALLOW PIE	0.55	0.00000
BANANA MARSHMALLOW PIE	0.60	0.07000
BBQ CHIPS 6OZ	1.90	0.07000
HERSHEY'S CHOCOLATE BAR	0.79	0.07000
HERSHEY''S W/ALMONDS	0.94	0.07000
KIT KAT	0.94	0.07000
REESES P/BUTTER CUP	0.94	0.07000
PRETZELS	0.55	0.00000
THREE MUSKETEER BAR	0.94	0.07000
BUTTERED POPCORN	0.65	0.07000
YOGURT RAISINS 1.3 OZ.	0.55	0.06500
SL ICED CINNAMON ROLL	0.75	0.00000
LARGE CROSSWORD PUZZLE	3.99	0.07000
LARGE WORD SEARCH BOOK	2.65	0.07000
CUBAN CRACKERS 3 OZ	0.65	0.07000
HOT SAUCE - SINGLE PKT	0.25	0.07000
N/S SS TEA W/LEMON	0.35	0.07000
N/S S.S FRUIT PNCH	0.35	0.07000
SEASONAL GREETING CARD	2.00	0.07000
BIRTHDAY CARD	2.00	0.07000
GET WELL CARD - PAPER	2.00	0.07000
FRIENDSHIP CARD - PAPER	2.00	0.07000
THANK YOU CARD	2.00	0.07000
SPANISH FRIENDSHIP CARD	2.00	0.07000
SPANISH BIRTHDAY CARD	2.00	0.07000
SPANISH MOTHER''S DAY CARD	2.00	0.07000
SPANISH CHRISTMAS CARD	2.00	0.07000
SYMPATHY CARD	2.00	0.07000
JUVENILE BIRTHDAY CARD	2.00	0.07000
11OZ DANDRUFF SHAMPOO	2.75	0.07000
4OZ SHAMPOO	1.10	0.07000
4OZ CONDITIONER	1.10	0.07000
4OZ BABY OIL	1.99	0.07000
4OZ SKIN CARE LOTION	1.06	0.07000
PROTECTION SHAVE CRM 7OZ	2.52	0.07000
4OZ BABY POWDER	1.33	0.07000
MEN A/P SPORT TALC 3 OZ	2.75	0.07000
2.7OZ COLGATE TOOTHPASTE	1.85	0.07000
IRISH SPRING 3.2OZ SOAP	1.05	0.07000

COOL WAVE CLR TOOTHPASTE	1.95	0.07000
3.5OZ DOVE SOAP	1.90	0.07000
AA 4PK ION3 BATTERIES	2.95	0.07000
REG MAGIC CREAM SHAVE	3.95	0.07000
PLAYING CARDS	1.90	0.07000
2PK ADVIL	0.90	0.00000
HALLS COUGH DROPS	0.95	0.00000
8.5 X 11 LETTER PAD WHT	1.05	0.07000
8.5 X 14 LEGAL PAD YELLOW	1.29	0.07000
#10 WHITE ENVELOPE	0.08	0.07000
SKETCH PAD 8.5 X 11 WHITE	1.05	0.07000
MANILLA ENVELOPE	0.25	0.07000
@Z PENCIL	0.21	0.07000
TOOTHBRUSH HOLDER	0.50	0.07000
MENS HAIR BRUSH	1.58	0.07000
5 INCH COMB	0.55	0.07000
2.5OZ EFFERGRIP	3.98	0.07000
8OZ MOUTHWASH MINT (NON-A	1.59	0.07000
HAIRDRESS 5 OZ	2.25	0.07000
HAIR FOOD W/VITAMIN E	2.50	0.07000
TAMPONS 18K	6.50	0.07000
SHOWER CAP	0.26	0.07000
TEK MED. TOOTHBRUSH	0.80	0.07000
12OZ COFFEE CUP W/HANDLE	1.01	0.07000
TUMS 3ROLL PACK - ORIGNAL	2.76	0.00000
MASSENGIL VINEGAR & WATER	2.25	0.07000
PRO GLO GEL POMADE	2.01	0.07000
WASHCLOTH WHITE	0.53	0.07000
TRIPLE ANTIBOTIC OINTMENT	3.95	0.00000
IVORY SOAP (1/BAR)	1.05	0.07000
HEMORRHOIDAL OINT 2 OZ	4.25	0.00000
2PK TYLENOL	0.90	0.00000
2PK ALKA SELTZER	0.75	0.00000
MASCARA	1.35	0.07000
EYELINER PENCIL BLACK	1.30	0.07000
SUAVE X-RELIEF LTN 100Z.	2.65	0.07000
SMALL COLORED PNCLS 12/B	3.45	0.07000
P-UP WOMENS A/P DEODORANT	2.25	0.07000
FELT TIP PEN-BLK	0.95	0.07000
SUPER SOFT TISSUES 150LPK	0.95	0.07000
EMERY BOARD (1)	0.15	0.07000
PROTECTION DISP RAZR 1/EA	0.35	0.07000
DULCE DE LECHE PASTE 7OZ	1.95	0.00000
HOT PICANTE SAUCE	2.35	0.07000
CHEESE PUFFS	0.90	0.07000
SL CHOCOLATE ICED DONUT	0.75	0.00000
SPICY CHEESY RICE 2 OZ	0.80	0.07000
CHAPSTICK	1.75	0.07000
TOLNAFATE ANTIFUNGAL CREA	3.50	0.00000
ACNE TREATMENT CREME	3.75	0.00000
HYDROCORTISONE CREAM	1.90	0.00000
SPANISH ENGLISH DICTIONAR	4.25	0.07000
GUAVA PASTE 16 OZ.	1.60	0.00000
SPORTS BRA SMALL	10.60	0.07000
SPORTS BRA MEDIUM	10.60	0.07000
SPORTS BRA LARGE	10.60	0.07000
CINNAMON CRISP	1.75	0.00000
BBQ POTATO CHIPS	0.80	0.00000
DELUXE SNACKENS 3.75OZ.	1.35	0.07000
FOAM EAR PLUG	0.30	0.07000
PLANTAIN CHIPS 2OZ.	0.69	0.07000
EYE DROPS	2.00	0.07000
SALINE SOLUTION 12 OZ	4.50	0.07000
MED. SHOWER SHOE	1.00	0.07000
LG. SHOWER SHOE	1.00	0.07000
SM. SHOWER SHOE	1.00	0.07000
6OZ TANG CLEAR	1.50	0.07000
6OZ TR PUNCH KOOLAID CLR	1.50	0.07000
KOOL AID - CLR CHERRY 6OZ	1.50	0.07000
6OZ GRAPE KOOL-AID CLEAR	1.50	0.07000
6OZ LEMONADE - CLEAR	1.50	0.07000
6 OZ LA HOT SAUCE	1.00	0.07000
GRAPE JELLY	2.50	0.00000
STRAWBERRY PRES 12 OZ	2.20	0.07000
CHEESE/PEANUT BUTTER CRAC	0.65	0.07000
TOWNHOUSE CHEDDAR CRACKER	0.50	0.07000

SUMMER SAUSAGE 5 OZ.	1.85	0.07000
BEEF SALAMI 5 OZ.	1.90	0.00000
KIPPERED BEEF REGULAR	1.35	0.00000
KIPPERED BEEF HOT	1.35	0.00000
(1BOX) CRUNCH N'MUNCH	2.50	0.07000
SL PEANUT BUTTR CRMS 140Z	2.05	0.07000
TOOTSIE ROLLS	0.99	0.07000
PEANUTS	0.45	0.07000
CHEESE NIPS	0.60	0.00000
HERSEY''S KISSES 30Z.	0.94	0.07000
RICE KRISPIE TREATS 1.3OZ	0.80	0.07000
CITRUS LIFT SHAMPOO	2.10	0.07000
15OZ BALSAM COND.	2.10	0.07000
15OZ BABY SHAMPOO	2.25	0.07000
PLASTIC CUP 22OZ	0.65	0.07000
PROGLO COCOA BUTTER CREME	2.65	0.07000
CHECKER SET W/BOARD	6.75	0.07000
DOUBLE SIX DOMINOES	3.50	0.07000
BOWL	0.75	0.07000
BEEF SUMMER SAUSAGE 3 OZ.	0.55	0.00000
HERSHEY'S W/ ALMOND 4 OZ	0.95	0.07000
CREAMY PEANUT BUTTER 18 O	2.85	0.00000
MILK DUDS	0.65	0.07000
JOLLY RANCHERS ASST. 3.70	0.99	0.07000
SOUR CREAM ONION 1.5 OZ	0.85	0.07000
SOAP DISH	0.65	0.07000
10Z PETROLEUM JELLY	0.80	0.07000
CHOC. GOBBLER W/PNTS/CRML	0.20	0.07000
CHOCOLATE THICK MINT .5OZ	0.16	0.07000
INDIGENT KIT	0.00	0.00000
CHICKEN INST. LUNCH	0.89	0.07000
BEEF INST. LUNCH	0.89	0.07000
SHRIMP INST. LUNCH	0.89	0.07000
HOT CAL/VEG.INST. LUNCH	0.89	0.07000
CAJUN SHRIMP INST. LUNCH	0.89	0.07000
CRAB INST. LUNCH	0.85	0.07000
ITALIAN FLAVOR INSTANT LU	0.85	0.07000
CHICKEN RAMEN NOODLES	0.65	0.07000
BEEF RAMEN NOODLE	0.65	0.07000
CHILI RAMEN NOODLE	0.65	0.07000
ORIENTAL RAMEN NOODLE	0.55	0.07000
SHRIMP RAMEN NOODLES	0.65	0.07000
TEXAS BEEF RAMEN NOODLE	0.65	0.07000
CHICKEN/MUSHROOM RAMEN	0.55	0.07000
CAJUN SHRIMP RAMEN NOODLE	0.65	0.07000
TEXAS BEEF INST. LUNCH	0.89	0.07000
I/L CAJON CHICKEN	0.89	0.07000
CAJUN CHICKEN RAMEN	0.65	0.07000
4OZ KEEFE COFFEE	3.05	0.07000
FD COFFEE CLRPK W/ZIP 3OZ	2.85	0.07000
NESCAFE 4OZ CLRPK W/ZIP	3.75	0.07000
TC COFFEE (1-STICK)	0.30	0.07000
S.S. HOT COCOA	0.25	0.07000
CC SHARP CHEESE SPREAD	1.89	0.07000
SALSA SQZ BOTTLE 15.5OZ	2.00	0.07000
S.S. KEEFE COFFEE	0.20	0.07000
S.S. CREAMER	0.07	0.07000
2X4 CNDYBAR-LIKE BABYRUTH	0.55	0.07000
FLOUR TORTILLAS	2.05	0.07000
18 OZ. JAR ORANGE DRINK	2.55	0.07000
19 OZ. JAR TEA W/LEMON	2.70	0.07000
GRAPE DRINK MIX 19 OZ.	2.70	0.07000
PEACH DRINK MIX 19 OZ.	2.70	0.07000
VANILLA CREME COOKIES	0.55	0.07000
RED BEANS & RICE 3.6 OZ.	1.25	0.07000
NESTEA W/LEMON 5.5 OZ CLR	1.50	0.07000
STRAWBERRY NUTRIGRAIN BAR	0.60	0.07000
HONEYBUN 4.75 OZ	0.90	0.00000
FRESH CATCH TUNA 4.23 OZ.	2.25	0.07000
ETHNIC FRIENDSHIP CARD	2.00	0.07000
ETHNIC BIRTHDAY CARD	2.00	0.07000
NEXT 1 SKIN CARE LOTION	2.75	0.07000
COCOA BUTTER LOTION 15OZ	2.75	0.07000
PETROLEUM JELLY 3.75OZ.	1.35	0.07000
NOXZEMA 2.5 OZ.	2.50	0.07000
JUST SO CURL ACTIVATOR	3.95	0.07000

MEN LADY CRSTL CLR DEO PW	2.50	0.07000
15OZ VO5 SHAMPOO	2.25	0.07000
15OZ VO5 COND.	2.25	0.07000
S213 MEN BLK CNV HI TOP	27.01	0.07000
RESTAURANT REG PLANTN CHP	1.60	0.07000
CASSAVA GARLIC PLANTN CHP	0.90	0.07000
CASSAVA REG PLANTAIN CHIP	0.90	0.07000
SURVE ANTI-BACTERIA A/P	2.25	0.07000
CHEX MIX BOLD & ZESTY 8OZ	2.85	0.07000
MAYONNAISE 12PK	1.05	0.07000
MUSTARD 12PK	1.05	0.07000
BAGO KETCHUP 12PK	1.05	0.07000
BAGO SOY SAUCE 10PK	0.70	0.00000
HOT SAUCE 12PK	1.05	0.07000
PEPPER - SINGLE PACKET	0.03	0.00000
BAGO LEMON JUICE 10PK	0.70	0.00000
BAGO JALA HOT SAUCE 12PK	1.05	0.07000
I/L CHEDDAR CHEESE	0.89	0.07000
BC CHILI NO BEANS	1.75	0.07000
BC CHILI W/ BEANS	1.75	0.07000
BC HOT CHILI W/ BEANS	1.75	0.07000
BC CHICKEN & GRAVY	1.75	0.07000
BC BEEF STEW	1.75	0.07000
BC ROAST BEEF & GRAVY 5OZ	1.75	0.07000
CHLORPHEN-ALLERGY TAB (1)	0.50	0.00000
SUDODRIN- NASAL/ALLERGY	0.50	0.00000
IPRIN (LIKE ADVIL) 2 PK	0.50	0.00000
APAP(LIKE X STGTH TYL)2PK	0.50	0.00000
SALT- SINGLE PACKET	0.03	0.00000
BLUE MAGIC BERG. COND.	2.50	0.07000
KK BROWN RICE 6.5 OZ	0.95	0.07000
YELLOW RICE 2 OZ.	0.75	0.07000
READING GLASSES +1.25	10.25	0.07000
FC SARDINES IN OIL	2.25	0.07000
FC CLAMS	2.25	0.07000
FC CRABMEAT	2.25	0.07000
COTTON SWABS 100CT BOX	2.50	0.07000
FC SARDINES/TOMATO SAUCE	2.25	0.07000
THREE CENT STAMP	0.03	0.00000
WHT CHEDDAR CRS DOODLES	0.55	0.07000
ONION RINGS 1 OZ	0.55	0.07000
HOT CHEESE POPCORN 1 OZ	0.55	0.07000
JALAPENO CHIPS 1 OZ	0.55	0.07000
CHEDDAR & S.C. CHIPS 1 OZ	0.55	0.07000
WHITE CHEESE POPCORN	0.55	0.07000
FC MACKERAL	2.25	0.07000
ONION & GARLIC CHIPS	0.55	0.07000
INDIGENT KIT NO RAZOR	0.00	0.00000
POPTARTS STRAWBERRY 6/BX	2.25	0.07000
POPTARTS BROWNSUGAR/CINN	2.25	0.07000
POPTARTS BLUEBERRY 6/BOX	2.25	0.07000
CA KICKIN' CORNBREAD	0.80	0.07000
CA SWEET CORNBREAD	0.80	0.07000
SL CREAM FILLED CUPCAKE	0.90	0.07000
WHOLE SHABANG 1.5 OZ	0.85	0.07000
POTATO CHIPS 6OZ BAG	1.90	0.07000
SOUR CREAM & ONION	1.90	0.07000
WHOLE SHABANG 6OZ	1.75	0.07000
CARAMEL CORN 1.5 OZ	0.80	0.07000
WHT CHEDDAR POPCORN 5OZ	1.59	0.07000
HOT&SPICY CORN CHIPS	0.85	0.07000
CHEESY REFRIED BEANS	0.80	0.07000
KIT#41064-DADE IND KIT	1.53	0.00000
KIT #41113 - DADE CO	0.45	0.00000
KIT #41246 - DADE CO	7.50	0.00000
KIT #41354 - FOOD KIT	11.60	0.07000
KIT #41454 - DADE CO - FL	11.60	0.00000
KIT#41554 - DADE CO. FL	11.60	0.00000
KIT#41654 - DADE CO. FL	11.60	0.00000
TWO CENTS STAMP	0.02	0.00000
CLR WLKMN W/EARBUD #A2945	19.00	0.07000
READING GLASSES +1.75	10.25	0.07000
READING GLASSES +2.25	10.25	0.07000
READING GLASSES 2.00	10.25	0.07000
PEANUT BUTTER CRKRS (SLV)	0.65	0.07000
PRTZL CRSP BUFL WING FLAV	0.90	0.07000

READING GLASSES +2.75	10.25	0.07000
SZ 8 RIDDELL IMPACT	24.46	0.07000
SZ 9 RIDDELL IMPACT	24.46	0.07000
SZ 9.5 RIDDELL IMPACT	24.46	0.07000
SZ 10 RIDDELL IMPACT	24.46	0.07000
SZ 10.5 RIDDELL IMPACT	24.46	0.07000
SZ 11 RIDDELL IMPACT	24.46	0.07000
SZ 12 RIDDELL IMPACT	24.46	0.07000
SZ 13 RIDDELL IMPACT	24.46	0.07000
SZ6 RIDDELL WOMEN'S	24.46	0.07000
SZ6.5 RIDDELL WOMEN'S	24.46	0.07000
SZ7 RIDDELL WOMEN'S	24.46	0.07000
SZ8 RIDDELL WOMEN'S	24.46	0.07000
SZ8.5 RIDDELL WOMEN'S	24.46	0.07000
SZ9 RIDDELL WOMEN'S	24.46	0.07000
SZ10 RIDDELL WOMEN'S	24.46	0.07000
SZ 11.5 RIDDELL IMPACT	24.46	0.07000
SZ8 WMS SLIPON SHOE	7.97	0.07000
SZ12 BLK HI-TOPS CONVERSE	27.01	0.07000
SZ11.5 HI-TOPS BLK CONVER	27.01	0.07000
SZ 11 BLK HI-TOPS CONVERSE	27.01	0.07000
SZ10.5 BLK HI-TOPS CONVRS	27.01	0.07000
SZ10 BLK HI-TOPS CONVERSE	27.01	0.00000
SZ9.5 BLK HI-TOPS CONVRSE	27.01	0.07000
SZ9 BLK HI-TOPS CONVERSE	27.01	0.07000
SZ8.5 BLK HI-TOPS CONVRSE	27.01	0.07000
SZ8 BLK HI-TOPS CONVERSE	27.01	0.07000
SZ7.5 BLK HI-TOPS CONVRSE	27.01	0.07000
CC JALAP CHEESE SQUEEZE	0.75	0.00000
SZ8 NAVY SLIPON SHOE	8.75	0.07000
SZ9 NAVY SLIPON SHOE	8.75	0.07000
SZ10 NAVY SLIPON SHOE	8.75	0.07000
SZ11 NAVY SLIPON SHOE	8.75	0.07000
SZ12 NAVY SLIPON SHOE	8.75	0.07000
SZ13 NAVY SLIPON SHOE	8.75	0.07000
SZ14 NAVY SLIPON SHOE	8.75	0.07000
SZ9 WMS SLIPON SHOE	7.97	0.07000
SZ10 WMS SLIPON SHOE	7.97	0.07000
SZ3 NAVY SLIP-ON SHOE	27.01	0.07000
CC SHARP CHDR CRS SQUEEZE	0.75	0.00000
SPICY CHEESY REFRID BEANS	1.70	0.07000
SPICY REFRIED BEANS&RICE	1.70	0.07000
I/L ROASTED CHICKEN	0.89	0.07000
STRAWBERRY MOON PIES	0.60	0.07000
16 OZ. GUAVA PASTE	1.59	0.07000
WHOLE ENCHILADA PARTY MIX	1.67	0.07000
SWEET SOE CHICKEN - POUCH	2.00	0.07000
CAJETA ELEGANCITA CNDY BR	0.79	0.07000
HERSHEY TAKE 5 CANDY BAR	0.94	0.07000
KIPPERED BEEF STEAK	1.25	0.00000
BEEF & CHEESE STICK	0.60	0.00000
CHICKEN VIENNA SAUSAGE	1.79	0.00000
STRAWBERRY CEREAL BAR	0.35	0.07000
ICED HONEY BUN 6OZ	0.99	0.07000
STRAWBERRY DONUTS 2/PK	0.90	0.00000
SL BEAR CLAW	0.99	0.00000
GLAZED DONUT HOLES	0.90	0.00000
SALTED PEANUTS 1.75 OZ	0.50	0.07000
HOT PEANUTS 1.75 OZ	0.50	0.07000
SQUZ CHIPOTLE LIME SPREAD	0.50	0.00000
SQUZ CAJETA CARAMEL SPREA	0.50	0.00000
HOT-N-SPICY CRNCHIPS 12OZ	2.00	0.07000
CA HOT CHEESE CRUNCHY	1.59	0.07000
RED LICORICE TWISTS	0.75	0.07000
HORMEL SPAM - 3OZ POUCH	1.25	0.00000
MARIA COOKIE	0.60	0.07000
INSTANT COMMISSARY	12.00	0.00000
SECURITY PEN-BLACK	0.95	0.07000
SECURITY TOOTHBRUSH	0.80	0.07000
BLUE SWEATSHIRT (SMALL)	8.00	0.07000
BLUE SWEATSHIRT (MEDIUM)	8.00	0.07000
BLUE SWEATSHIRT (LARGE)	8.00	0.07000
BLUE SWEATSHIRT (X-LARGE)	8.00	0.07000
BLUE SWEATSHIRT (XX-LRG)	13.00	0.07000
NAVY SWEATSHIRT - 3XL	13.00	0.07000
NAVY SWEATSHIRT - 4XL	13.00	0.07000

NAVY JAM SHORTS - SMALL	8.00	0.07000
NAVY JAM SHORTS (M)	8.00	0.07000
NAVY JAM SHORTS (L)	8.00	0.07000
NAVY JAM SHORTS (XL)	8.00	0.07000
NAVY JAM SHORTS (2XL)	10.00	0.07000
NAVY JAM SHORTS (3XL)	10.00	0.07000
SPAM SINGLES CLSC POUCH	1.25	0.00000
BF&CHS SNCK PK HEAT FLVOR	1.05	0.00000
BEEF & CHEESE SNACK PACK	1.05	0.00000
BEEF STICK HIGH HEAT FLAV	1.30	0.00000
BEEF STICK ORIGINAL 2 OZ	1.30	0.00000
POPPERS ORIGINAL FLAVOR	1.05	0.00000
POPPERS HIGH HEAT FLAVOR	1.05	0.00000
BF SUMMER SAUSAGE ORG FLV	2.30	0.00000
BF SUMR SAUSAGE HEAT FLV	2.30	0.00000
BROWNIE	0.79	0.00000
CHOC THUNDER DONUTS 6/PK	1.75	0.00000
MOON LODGE PRETZELS 11 OZ	1.65	0.07000
3X LARGE T-SHIRT	5.00	0.07000
5XL CREWNECK T-SHIRT	6.00	0.07000
2XLG BOXER SHORTS WHT	4.25	0.07000
3XLG BOXER SHORTS WHT	4.25	0.07000
MEN''S BOXER - 5XL	6.00	0.07000
MEN BRIEFS 2XL	3.95	0.07000
BRIEFS WHITE 3XLG	3.95	0.07000
15OZ VOLUME SHAMPOO	2.10	0.07000
15OZ VOLUME CONDITIONER	2.10	0.07000
DAILY MOISTURIZNG SHAMPOO	2.20	0.07000
DANDRUFF SHAMPOO	3.35	0.07000
MAXIMUM STRENGTH LOTION	3.75	0.07000
LIPSTICK RED	2.50	0.07000
CHESS&CHECKER COMBO	6.75	0.07000
S26 WMS SLIPON SHOE	7.97	0.07000
S27 WMS SLIPON SHOE	7.97	0.07000
SZ14 MEN BLK CNV HI TOP	27.01	0.07000
N/S SS ORANGE DRNK	0.35	0.07000
BEEF.SALAMI SOMR SAUSAGE	2.30	0.00000
BREAK KIT (KEEPS COFFEE)	0.33	0.07000
KF DECAF(CLRPK W/ZIP) 3 OZ	3.15	0.07000
MAXWELL HOUSE 4 OZ CLEAR	3.25	0.07000
MACARONI & CHEESE 3 OZ	1.25	0.07000
SPICY MAC & CHEESE 3 OZ	1.25	0.07000
CHEESY RICE 2 OZ	0.80	0.07000
I.L.- JALAPENO CHEDDAR	0.89	0.07000
SPCY INST NACHO CHS SAUCE	1.25	0.07000

EXHIBIT "B"
Commissary Sales for FYE September 30, 2007

MONTH	TOTAL	COMMISSION	TAX	PAID TO VENDOR
Oct. 2006	167,570	49,083	8,556	109,931
Nov.	182,346	53,446	9,372	119,528
Dec.	169,610	49,512	8,850	111,248
Jan. 2007	181,045	53,442	8,950	118,653
Feb.	186,289	54,556	10,825	120,908
Mar.	217,168	63,270	12,865	141,033
Apr.	192,356	56,105	11,407	124,844
May	196,793	57,474	11,745	127,574
June	188,775	55,168	11,401	122,206
July	179,275	52,510	10,818	115,947
Aug.	204,998	61,538	12,691	130,769
Sept.	188,202	55,782	11,495	120,925
Total	2,254,427	661,886	128,975	1,463,566
Average	187,869	55,157	10,748	121,964

EXHIBIT "C"

THIS CHECK CONTAINS THE FOLLOWING SECURITY FEATURES: BLUE SAFETY PAPER & MICRO LINE PRINTING

KEEFE COMMISSARY NETWORK, L.L.C.
10880 LINPAGE PLACE
ST. LOUIS, MO 63132

COMMERCE BANK OF ST. LOUIS
ST. LOUIS, MISSOURI

№ 09168

DATE 01/13/09

80-459/810

PAY ****FIVE THOUSAND AND 00/100**** $ 5000.00

KEEFE COMMISSARY NETWORK, L.L.C.

TO THE ORDER OF
CLERK OF THE BOARD
MIAMI-DADE COUNTY
111 NW 1ST ST.
MIAMI, FL 33128

VOID IF NOT PRESENTED FOR PAYMENT WITHIN 180 DAYS

MP

⑈009168⑈ ⑆081004594⑆ 20306373 4⑈

ORIGINATOR
VB GROUP / BRANCH 8899 KEEFE COMMISSARY NETWORK L.L.C. - ST. LOUIS, MO 63132 DETACH BEFORE DEPOSITING

DESCRIPTION	VENDOR INVOICE	GPB	CUSTOMER #	DOCUMENT	UNIT	ACCOUNT	AMOUNT
PROTEST FILING FEE			29150J				5000.00

DETACHED CHECK IS PAYMENT IN FULL OF ACCOUNT SHOWN ABOVE IF INCORRECT RETURN WITHOUT ALTERATIONS

EXHIBIT C

THIS CHECK CONTAINS THE FOLLOWING SECURITY FEATURES: BLUE SAFETY PAPER & MICRO LINE PRINTING

KEEFE COMMISSARY NETWORK, L.L.C.
10880 LINPAGE PLACE
ST. LOUIS, MO 63132

COMMERCE BANK OF ST. LOUIS
ST. LOUIS, MISSOURI

№ 09574

DATE June 2, 2009

80-459/810

PAY Five Thousand & 00/100*** $5,000.00

KEEFE COMMISSARY NETWORK, L.L.C.

TO THE ORDER OF • Miami-Dade County

VOID IF NOT PRESENTED FOR PAYMENT WITHIN 180 DAYS

MP

⑈009574⑈ ⑆081004594⑆ 20306373 4⑈

ORIGINATOR GROUP / BRANCH **8899 KEEFE COMMISSARY NETWORK, L.L.C. - ST. LOUIS, MO 63132**

DETACH BEFORE DEPOSITING

DESCRIPTION	VENDOR INVOICE	GPB	CUSTOMER #	DOCUMENT	UNIT	ACCOUNT	AMOUNT
RFP 649 Inmate Commissary and Banking Services Protest Filing Fee						0672-06	$5,000.00

DETACHED CHECK IS PAYMENT IN FULL OF ACCOUNT SHOWN ABOVE IF INCORRECT RETURN WITHOUT ALTERATIONS

5/21/09 - 20215C

Memorandum

MIAMI-DADE COUNTY

Date:

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

From: George M. Burgess
County Manager

CLERK OF THE BOARD
2009 MAY 29 PM 4:16
CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1

Subject: Recommendation for Approval to Award Contract No. RFP 649: Inmate Commissary and Banking Services

---

RECOMMENDATION

It is recommended that the Board of County Commissioners approve award of this contract to provide inmate commissary and banking services for the Miami-Dade Corrections and Rehabilitation Department.

CONTRACT NO:	RFP 649
CONTRACT TITLE:	Inmate Commissary and Banking Services
DESCRIPTION:	To obtain proposals from qualified firms to provide Inmate Commissary and Banking Services for inmates at detention facilities. The commissary services include supplying items such as stationary, snacks, toiletries and clothing. The selected proposer shall provide and maintain computer hardware and software to have an integrated financial system which will track the inmates' accounts. The banking services include maintaining accounts for inmates' personal property and funds, and for invoicing of medical services.
TERM:	Four years with six, one-year options-to-renew.
APPROVAL TO ADVERTISE:	September 18, 2008
CONTRACT AMOUNT:	$4.4 million in revenue to the County for the initial four year term of the contract. If the County exercises the six, one-year options-to-renew, the total contract revenue is projected to be $11 million.
METHOD OF AWARD:	Awarded to the highest ranked responsive, responsible vendor based on the evaluation criteria established in the solicitation. A full and open competitive Request for Proposals process was used.

VENDOR RECOMMENDED FOR AWARD:

Vendor	Address	Principal
ARAMARK Correctional Services, LLC (Non-local vendor)	1101 Market Street Philadelphia, PA 19107	Thomas Burns, Vice President

PERFORMANCE DATA: There are no known performance issues with this firm.

COMPLIANCE DATA: There are no known compliance issues with this firm.

VENDORS NOT RECOMMENDED FOR AWARD: Swanson Services Corporation
Trinity Services, Inc.
Keefe Commissary Network (non-responsive)

CONTRACT MEASURES: The Review Committee of February 15, 2008, recommended no measures. This is a revenue generating contract.

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 contract is revenue generating.

LOCAL PREFERENCE: Applied in accordance with applicable Ordinance, but did not affect the outcome.

PROJECT MANAGER: Sheila Siddiqui, Department of Correction and Rehabilitation

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

DELEGATED AUTHORITY: If this item is approved, the County Mayor or designee will have the authority to exercise, at County Mayor's or designee's discretion, subsequent options-to-renew and other extensions in accordance with the terms and conditions of the contract.

BACKGROUND

Miami-Dade Corrections and Rehabilitation Department (MDCR) provides commissary and banking services (including inmate account maintenance and trust fund management) for approximately 7200 inmates incarcerated in five jail facilities. The services are provided pursuant to Florida Statute 951.23 and Florida Model Jail Standards. The current contract has been in place for over 10 years and will expire on October 13, 2009.

Commissary orders placed by inmates are delivered once a week to a centralized delivery point. Miami-Dade Correction and Rehabilitation (MDCR) personnel accept the commissary orders and deliver the items to the individual cells. Inmates currently place their orders using scantron forms that require manual processing. The recommended contract provides an automated solution by connecting commissary orders to inmate trust accounts via real-time banking servers for inmate populations under direct supervision (approximately 4,328 inmates). An enhancement over the current contract is the inclusion of automated self-service kiosks which will allow inmates to check their trust accounts, place commissary orders, file grievances, and request medical and counseling services. MDCR will also use the kiosks to post general inmate announcements and bulletins. Another enhancement is the automated payment and deposit service which allows visitors at MDCR facilities to make deposits into inmate trust accounts via kiosks in the lobby. On-line deposits will also be accepted.

These services are revenue generating as the County receives a commission (currently 32 percent) for commissionable items sold. The new contract provides a 39 percent commission. This rate is applied to all commissary items, except for non-commissionable "welcome" hygiene kits and indigent kits that are paid for by the County. The County also has the option to require the vendor to deliver the commissary supplies directly to the inmates at a reduced commission rate of 35 percent. Commission (i.e., revenues) from commissary sales will continue to provide revenue for the Inmate Welfare Fund, which is administered through a Committee comprised of County staff. These funds are used for the overall inmate welfare and may include vocational training, educational training, General Equivalency Diploma testing, religious items (i.e., Bibles, Korans) recreational items, inmate re-entry activities, and rehabilitation programs. The funds are used pursuant to state statute and comply with all County finance rules.

The County Attorney's Office deemed the proposal from Keefe Commissary Network non-responsive. On January 16, 2009, Keefe Commissary Network filed a bid protest disputing this determination. As the County Manager's award recommendation had not been filed with the Clerk of the Board, the protest was premature. The proposer was notified and the filing fee was returned.

Assistant County Manager

MIAMI-DADE COUNTY

Carlos Alvarez, Mayor

Procurement Management
111 NW 1st Street • Suite 1300
Miami, Florida 33128-1974
T 305-375-5289 F 305-375-4407 305-372-6128

miamidade.gov

CLERK OF THE BOARD
2009 MAY 29 PM 4:18
CLERK, CIRCUIT & COUNTY COURTS
DADE COUNTY, FLA.
#1

May 29, 2009

All Responding Proposers (See Distribution List)

SUBJECT: RFP649
Inmate Commissary and Banking Services

Dear Proposers:

Evaluation of proposals tendered in response to the above cited solicitation has been completed. The County Manager or designee has recommended award as shown in the attached document.

This notice is provided in accordance with Section 4.8 of the solicitation and Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County. Our provision of this notice also serves to confirm the lifting of the Cone of Silence from this procurement action as dictated by Section 2-11.1(t) of the County Code.

We appreciate the participation of all proposers which responded to the subject action. If you have any questions, please contact me at 305-375-4211 or gonzaam@miamidade.gov.

Sincerely,

Amado Gonzalez
Procurement Contracting Officer

Distribution List: ARAMARK Correctional Services, LLC
Swanson Services Corporation
Keefe Commissary Network
Trinity Services, Inc.

Attachment: County Manager Award Recommendation

cc: Clerk of the Board
Oren Rosenthal, Assistant County Attorney
File

Agenda Coordinator Larry Day

HARVEY RUVIN, CLERK OF THE BOARD

IN RE: THE PROTEST OF THE MAY 29, 2009 RECOMMENDATION OF AWARD OF CONTRACT FOR RFP NO. 649 FOR INMATE COMMISSARY AND BANKING SERVICES

KEEFE COMMISSARY NETWORK, L.L.C.,

Petitioner,

v.

MIAMI-DADE COUNTY,
a political subdivision of
The State of Florida.

Respondent.

PETITIONER KEEFE COMMISSARY NETWORK L.L.C.'S NOTICE OF FILING ADDITIONAL PUBLIC RECORDS AND ADDITIONAL GROUNDS FOR PROTEST THAT IT MAY SEEK TO INTRODUCE AS EVIDENCE AT THE PROTEST HEARING

On June 3, 2009, Petitioner Keefe Commissary Network, L.L.C. ("Keefe"), by and through previous counsel, Greenberg Traurig, and pursuant to Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County ("Code"), as amended, and Implementing Order 3-21, filed a Written Intent to Protest to the County Manager's May 29, 2009, Recommendation of Award of the Contract for RFP No. 649 for Inmate Commissary and Banking Services at Miami-Dade County detention facilities. Section 2-8.4 (b) of the

91

Code requires the protester to file all pertinent documents and supporting evidence with the Clerk of the Board and provide copies to all participants in the competitive process and to the County Attorney within three (3) working days after the filing of a Written Intent to Protest, and to submit further supplementary filings in the event that public records are made available by the County after the filing, pursuant to a timely Public Records Request.

Consistent with the established practices of administering administrative bid protests in Miami-Dade County, many, if not all, of the referenced materials are public records, kept in the ordinary course of business by the Clerk of the Board. Thus, to avoid unnecessary duplication of sizeable documentation already on file for the subject RFP, counsel for Keefe did not provide copies of the RFP binder, Proposal Binders, and other voluminous public records already kept in the public record, since it is common practice for the procuring Department to provide them to the Hearing Examiner during the course of the protest proceedings. Instead, they have been incorporated by reference in Keefe's prior filing. Attached to that Written Intent to Protest, Petitioner Keefe provided specific Exhibits which were referenced in the pleading, and which Petitioner Keefe also intends to move into evidence at the Hearing.

Further, pursuant with the provisions of the Code, previous legal counsel for Keefe, Greenberg Traurig, made a timely public records request on June 2, 2009, within the first three (3) working days after filing the Written Intent to Protest.[1] Undersigned counsel received from the Miami-Dade County Department of Procurement Management the documents responsive to the public records request June 16, 2009, at approximately 3:30 pm and is hereby timely filing on behalf of Keefe additional public records Exhibits

[1] Undersigned counsel was retained by Keefe as substitute counsel on June 15, 2009.

which are relevant to the instant procurement process, and which Keefe may also seek to introduce into evidence at the Hearing. See attached Additional Exhibit Index. Not all exhibits may be utilized. Consistent with the provisions of the Code, Petitioner Keefe may also seek to introduce additional public records produced by Respondent Miami-Dade County in response thereto that may be relevant to these proceedings. Also, please note that in an effort to expedite the proceeding, at the Hearing, Petitioner Keefe will provide a condensed Exhibit Binder from the attached exhibits to the Hearing Examiner and parties containing selected Exhibits that will be more specifically referenced to support or clarify arguments made and protest grounds set forth in its protest.

Lastly, pursuant with the provisions of the Code, Keefe has reserved its right in the Written Intent to Protest to identify additional grounds for protest within forty-eight (48) hours of receiving the items requested in its public records request. Specifically, Keefe may raise the following additional grounds for protest based on the review of these additional public records: (i) Aramark's non-responsive failure to identify subcontractors as required on Form A-1; (ii) Aramark's non-responsive failure to identify its subcontracting policies and procedures as required on Form A-6; (iii) Aramark's non-responsive failure to include the minimum of five (5) contracts of similar size and scope of services as required in the RFP; (iv) Aramark's non-responsive failure to identify various technologies required in the RFP; (v) Aramark's non-responsive failure to include the requested amount of food items for sale to the inmates in the RFP; (vi) Aramark's non-responsive failure to provide for an off-site warehouse as required in the RFP; (vii) Aramark's failure to properly identify Miami-Dade County as the entity for proposed services; (viii) Aramark's failure to properly disclose litigation history; (ix)

Aramark's non-responsive failure to include pricing for additional and optional services as required in Form B-I; (x) Aramark's non-responsive failure to provide for all equipment used in the contract to become the property of Miami-Dade County at the conclusion of the contract; (xi) the scoring of Aramark's bid response in light of issues raised herein; and (xii) Keefe further reserves the right to identify any non-responsive issues identified in Swanson Services Corporation's bid response as further illustration of the arbitrary and capricious action in deeming Keefe's bid non-responsive.

Dated: June 11th, 2009

ROBERT H. FERNANDEZ, P.A.
800 Douglas Road, Suite 850
Coral Gables, FL 33134-2088
Telephone (305) 444-0924
Facsimile (305) 444-0923

By: _____
Robert H. Fernandez, Esq.
Florida Bar No. 091080

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished via hand-delivery this 11th day of June, 2009 to the County Attorney's Office and to the Clerk of the Board.

_____
Robert H. Fernandez, Esq.

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

In re: Bid Protest
Miami-Dade County Procurement Department
RFP No. 649
Inmate Commissary and Banking Services
_____/

MIAMI-DADE COUNTY'S OPPOSITION TO
KEEFE COMMISSARY NETWORK'S BID PROTEST

Keefe Commissary Network, L.L.C. ("Keefe") filed a bid protest of Miami-Dade County's (the "County") recommendation to award the contract for the Miami-Dade County Corrections and Rehabilitation Department's ("Corrections Department") Inmate Commissary and Banking Services RFP 649 (the "Contract") (RFP is attached as Exhibit 1) to Aramark Correctional Services ("Aramark"). Keefe argues that its failure to sign the actual proposal was a scrivener's error and not a material component of the proposal and as a result its proposal should not have been deemed non-responsive by the County. Keefe also protests the award of this Contract to Aramark by arguing that Aramark's proposal was not responsive and listing several arguments for this position. Furthermore, Keefe requests that its proposal be evaluated and that award of the contract be made to Keefe.

Keefe's protest should be denied because Keefe's proposal was not responsive for failure to sign the actual proposal. The signature aspect of a proposal is a material component of the proposal and the failure to sign a proposal is not a mere scrivener's error as Keefe argues. By failing to sign the actual proposal, Keefe has failed to provide the County with any assurance that the Contract would be entered into and has prevented the County from proceeding against the

proposer in the event that Keefe refuses to honor the proposal. In addition, Keefe has no standing to challenge the responsiveness of Aramark's proposal because as a non-responsive proposer, Keefe would not be eligible for contract award even if Aramark's proposal was found non-responsive.

Background

The County, through the Department of Procurement Management ("Procurement Department") and the Corrections Department issued an RFP to obtain Inmate Commissary and Banking Services for inmates at the Corrections Department's Detention Centers. These banking services include processing and maintaining accounts for inmates' personal property, funds, and billing for medical services. The County issued this RFP in order to obtain a new contract since the Corrections Department's current contract for inmate commissary and banking services expires in October of 2009.

Argument

In response to the County's RFP, Keefe submitted a proposal. (Cover page of Keefe's proposal also known as Form A-1 is attached as Exhibit 2). After reviewing Keefe's proposal and noticing that Keefe had not signed the cover page of the proposal, the Procurement Department sent a memorandum to the County Attorney's Office requesting a legal opinion as to whether or not Keefe's proposal was responsive in light of Keefe's failure to include a signature on the cover page of the proposal. (Memorandum dated Nov. 20, 2008 is attached as Exhibit 3). Assistant County Attorney, Hugo Benitez, issued a hand-written opinion on the actual memorandum indicating that the "failure to execute a bid or proposal rendered a bid non-responsive" and adding that "absent another unequivocal indication of intent to be bound by the offer, the proposal must be rejected." Id. at Exhibit 3. While counsel for the County is unable to

locate any Florida cases addressing this issue, in the Federal context an unsigned bid is usually found non-responsive. See Firth Construction Co., Inc. v. United States, 36 Fed. Cl. 268, 272 (1996) ([A]n unsigned bid must be rejected as unresponsive because without an appropriate signature, the bidder would not be bound should the government accept the bid). This is exactly the situation that this case presents. By not signing the proposal, Keefe is not bound by it, and as a result the County is deprived of the assurance that the contract would be entered into according to the terms of the RFP and the proposal.

In the Federal context, if there is other evidence "indicating the bidder's intention to be bound by an unsigned bid," then the bid may be found responsive. Id. Other such evidence is described as a bid guarantee or an actual signed letter from the bidder where the bid is referred to and clearly identified. Id. However, in this case there is no bid guarantee nor a signed letter indicating an intention to be bound that would bind Keefe if the County were to award the Contract to Keefe. While, Keefe did sign certain affidavits that were submitted with their proposal, the affidavits are not the equivalent of a bid guarantee and they are not otherwise an indication that Keefe intended to be bound by the proposal. From a policy perspective Keefe's proposal should also be found non-responsive because otherwise in the future bidders and proposers could avoid signing bids and proposals knowing they could later opt in or out.

By failing to sign the proposal, Keefe has prevented the County from any assurances that the Contract would be entered into. Failing to sign the proposal is not a mere scrivener's error but is instead a material defect that is not waivable, and as a result Keefe's proposal is non-responsive. See Glatstein v. City of Miami, 399 So.2d 1005 (Fla. 3d DCA), rev. denied, 407 So.2d 1102 (Fla. 1981) (a 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).

Furthermore, Keefe has no standing to challenge the recommendation of award to Aramark based on the adequacy of Aramark's proposal because Keefe would not be awarded the contract even if Aramark's proposal was found not responsive. As a result, at this point of the process the only issue that Keefe can protest is whether or not they should have been found responsive or not.

Governmental decisions in the field of competitive procurement are to be given wide deference. As the Florida Supreme Court stated, "[a] public body has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of this discretion will not be overturned by a court even if it may appear erroneous and even if reasonable persons disagree. *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505, 507 (Fla. 1982) (Finding that there was no illegality, fraud, oppression or misconduct on the part of the government entity, the Court found that "it was clearly within the commission's discretion to award the subject bid...." Id. Furthermore, "only a showing of clear illegality will entitle an aggrieved bidder to judicial relief.... Judicial intervention in an agency decision ... is limited to those few occasions where fraud or corruption has influenced the conduct of officials." *Department of Transportation v. Groves-Watkins Constructors*, 530 So.2d 912, 913-914 (Fla. 1988). As such, the scope of review of a government's action with regards to competitive bidding is "limited to whether the purpose of competitive bidding has been subverted. In short, the hearing officer's sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally or dishonestly." Id.

It is clear from the facts of this case that the County acted well within its authority in finding Keefe non-responsive. The County found Keefe non-responsive based on its failure to sign the proposal, a material defect that is not waivable. The Procurement Department even went a far as consulting with the County Attorney to obtain a legal opinion as to the responsiveness of Keefe's proposal in light of its failure to sign the proposal. Clearly the County's actions were not fraudulent, illegal, arbitrary or dishonest, and as a result, the decision of the County should not be overturned.

Conclusion

WHEREFORE, for the reasons described above, the County respectfully requests that the Hearing Examiner dismiss Keefe's protest, or, in the alternative, deny the protest and fully affirm the County's recommended contract award for the project titled Inmate Commissary and Banking Services RFP 649 to Aramark Correctional Services.

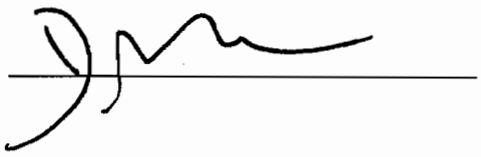
Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

By: _____
Daniel Frastai
Assistant County Attorney
Florida Bar No. 0666041
Telephone: (305) 375-5480
Facsimile: (305) 375-5634

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of the Board and was sent via facsimile and mail this June 23, 2009 to: Robert H. Fernandez, Esq., Robert H. Fernandez, P.A., 800 Douglas Road, Suite 850, Coral gables, FL 33134-2088; and to Karen D. Walker, Esq., P.O. Drawer 180, Tallahassee, FL 32301.



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

In re: Bid Protest
Miami-Dade County Procurement Department
RFP No. 649
Inmate Commissary and Banking Services

MIAMI-DADE COUNTY'S SUPPLEMENTARY BRIEF

The opinion cited in the decision in the bid protest titled Mark Brothers Inc. v. Miami-Dade County and Central Florida Equipment Rentals, Inc. is consistent with the position taken by the County in this matter because in the Marks Brothers case the defect at issue was a minor irregularity that was waivable by the County unlike the irregularity in this case. In Marks Brothers, the recommended bidder was required as part of its bid to submit a "Letter of Intent" signed by the subcontractor (not the bidder) indicating which subcontractor it intended to use to meet the DBE requirements. However, the form did not have to be submitted with the bid and was instead a responsibility issue and not a responsiveness issue. The reason for this is clear. The failure to include such a letter of intent to use a specific DBE subcontractor or the failure to sign such a letter would not amount to a material defect because it would not deprive the County of any assurances that the contract would be entered into and it would not give an unfair advantage to that bidder over others.

In the Marks Brothers protest there is no indication that any bidder had failed to sign the bids. In Marks Brothers the bidder was still obligated to perform the contract, was still bound by the terms of the bid and could not opt out of the bid simply because of the fact that the signature on the DBE form was missing. The bidder would still be bound to the price, regardless of which

DBE subcontractor is used in the end. In fact, even if the bidder, for whatever reason, was unable to provide the listed DBE subcontractor, the bidder would still be required to provide a DBE subcontractor, to perform according to the terms and price of the contract and would still be held to the same DBE utilization percentages provided for in the contract.

On the other hand, in the case at hand the irregularity of failing to sign the main proposal page, the cover letter, or the A-1 form as it is called clearly fits within the definition of a material irregularity as articulated by the 3rd DCA in Robinson Electrical Co., Inc. v. Miami-Dade County. As the court stated in Robinson a material defect is one that would deprive a municipality of the assurance that the contract will be entered into and that it is of such nature that it would give the bidder an unfair advantage. In this case the failure to sign the actual proposal is a classic example of a defect that would deprive the County of the assurance that the contract would be entered into. The simple reason being that the bidder would have the option not to agree to be bound.

The situation presented in the Marks Brothers bid protest, on the other hand, involves a minor irregularity and as a result one that could be waived by the County. The minor irregularity that was at issue in Marks Brothers would be the equivalent in the instant case of a proposer having submitted a signed proposal but failing to include or sign one of the affidavits. For example, if the proposer had not signed the affidavit indicating what its subcontracting policy was, this would not have resulted in the proposal being deemed non-responsive because it would not have deprived the County of the assurance that the contract would be entered into. As long as the proposal is signed and the basic terms are included, such as price, there is a binding offer. As long as the issue of subcontracting policies is cured prior to award it would not give that bidder an unfair advantage. While important, the subcontracting policy is not a material term in that

failure to include it does not deprive the County of any assurances that the actual contract would be entered into. However, the defect at issue here of failing to sign the proposal would deprive the County of such an assurance because it would allow the proposer the option to decide whether to be bound at all and as a result is a classic example of a material defect. Clearly, Keefe's failure to sign the actual proposal is a material defect and as such it is not waivable and the County had no discretion but to find Keefe's proposal non-responsive.

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

By: _____
Daniel Frastai
Assistant County Attorney
Florida Bar No. 0666041
Telephone: (305) 375-5480
Facsimile: (305) 375-5634

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail this 29th of June, 2009 to: Robert H. Fernandez, Esq., Robert H. Fernandez, P.A., 800 Douglas Road, Suite 850, Coral gables, FL 33134-2088; and to Karen D. Walker, Esq., P.O. Drawer 180, Tallahassee, FL 32301.

_____

HARVEY RUVIN, CLERK OF THE BOARD

IN RE: THE PROTEST OF THE MAY 29, 2009 RECOMMENDATION OF AWARD OF CONTRACT FOR RFP NO. 649 FOR INMATE COMMISSARY AND BANKING SERVICES

KEEFE COMMISSARY NETWORK, L.L.C.,

Petitioner,

v.

MIAMI-DADE COUNTY,
a political subdivision of
The State of Florida.

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF HEARING EXAMINER

Pursuant to Section 2-8.4 (c) of the Code of Miami-Dade County, the above styled protest was referred to the undersigned Hearing Examiner. The undersigned reviewed the bid protest filed by KEEFE COMMISSARY NETWORK, L.L.C., (hereinafter "Keefe"), to the County Manager's Recommendation of Award of the Contract for Inmate Commissary and Banking Services for four (4) years with six (6) one year options to renew, RFP NO. 649: INMATE COMMISSARY AND BANKING SERVICES ("RFP 649"). The recommended bidder, Aramark Correctional Services,

LLC (hereinafter "Aramark") moved to intervene in the bid protest, and that motion was granted without objection. All parties were well represented by counsel of their own choosing and the County was represented by the County Attorney's Office. An Administrative Bid Protest Hearing was conducted on June 24, 2009, at the Stephen P.Clark Government Center, 111 N.W. 1st Street, 28th Floor Conference Room, in Miami-Dade County, Florida. Sworn testimony was presented, exhibits were entered into evidence and, written arguments and proposed recommendations were submitted by all parties.

Having reviewed and considered all of the documents, evidence and testimony presented at the Hearing, the written Bid Protest, and submissions of the parties, as well as arguments from counsel, the undersigned Hearing Examiner makes the following findings and recommendations:

Findings of Fact

1. On September 18, 2008, the County Manager requested authorization to advertise RFP 649. (*See* Ex. F).[1]

2. Responsive Proposals to RFP 649 were due on October 29, 2008. (*See* Ex. A). The deadline was later extended by Addendum #3 to RFP 649 to November 17, 2008.

3. Keefe, Aramark Correctional Services, L.L.C. ("Aramark"), Swanson Services Corporation and Trinity Services, Inc. submitted timely responses to RFP 649. (*See* Ex. F).

[1] Keefe's Bid Protest included a Binder that contained Exhibits A-J. The County Attorney stipulated on behalf of the County to the authenticity of all Exhibits, and did not object to the admission of all of Keefe's Exhibits into evidence in this proceeding.

4. On November 20, 2008, Steven Corwin, the Miami-Dade County Department of Procurement Management ("Procurement Department") Procurement Contracting Officer, sent an interoffice memorandum to Assistant County Attorney Hugo Benitez stating the following:

> On November 17, 2008, proposals were received for the subject RFP and subsequently reviewed for responsiveness. One of the Proposers was Keefe Commissary Network (KCN). Upon review of the KCN proposal, it was noted that KCN failed to sign Form A-1, Cover page of Proposal. Please advise whether the subject proposal is non-responsive. (*See* Ex. I).

5. In response to such inquiry, Assistant County Attorney Hugo Benitez hand-wrote on this interoffice memorandum the following two sentences:

> "Failure to execute a bid or proposal renders a bid non-responsive. Absent another unequivocal indication of intent to be bound by the offer, the proposal must be rejected." Hugo Benitez 11/20/08 (*See* Ex. I).

6. Keefe was not notified at that time that its bid was deemed non-responsive nor was Keefe notified that it had failed to sign Form A-1.

7. In response to a specific e-mail inquiry from Keefe on January 7, 2009, as to whether it was also being invited for oral presentations before the Evaluation/Selection Committee, the Procurement Department notified Keefe by e-mail that its submitted proposal was determined by the County's Attorney's Office non-responsive due to the fact that the Form A-1 was not signed. (*See* Ex. B -D). This was the first time that Keefe was notified its bid had been deemed non-responsive.

8. As of January 7, 2009, Keefe had not seen, been advised or requested review of the contents of any of the other proposed bids.

9. That same day, January 7, 2009, Marcus Perez, Regional Vice President of Keefe, sent a written communication [e-mail] stating:

Mr. Gonzalez,

I certainly understand the issue. In section 1.3 on page 2 [of RFP], "The County may, at its sole and absolute discretion...waive any irregularities in this Solicitation or in the responses received as a result of this process." We obviously intended for our offer to be binding. I apologize for not submitting a signed copy but we would like to request a waiver for this clerical error. Please let me know as soon as possible if this waiver will be granted. I will be happy to fax a signed cover page immediately. Thank you. (*See* Ex. E).

10. The Procurement Department refused to accept a signed Form A-1 at this time and maintained that Keefe's response to RFP 649 was "non-responsive" for failure to execute the Form A-1. Form A-1 was filled out completely, just lacking a signature.

11. Keefe's bid proposal was not evaluated further to determine whether there was an unequivocal indication of intent to be bound by the offer.

12. Keefe was not given an opportunity to cure the error by providing a signed copy of Form A-1.

13. The County never notified Keefe of the error on Form A-1 and no inquiry was made of Keefe regarding its desire to be considered and bound by its bid proposal.

14. Keefe's bid was not scored with the other proposed bidders.

15. On May 29, 2009, the County Manager issued a Recommendation for Approval to Award Contract No. RFP 649: Inmate Commissary and Banking Services and stated therein that Keefe's response was deemed non-responsive. (*See* Ex. F).

16. On June 3, 2009, Keefe filed its timely written Intent to Protest. (*See* Ex. G).

17. The undisputed testimony of Marcus Perez, Regional Vice President for Keefe, was that Keefe is and has been the current provider of the services solicited in

RFP 649 since Miami-Dade County (the "County") chose to privatize these services in October 1998.

18. The undisputed testimony of Marcus Perez was that Keefe has performed its contractual obligations efficiently and responsibly throughout the almost eleven (11) years that it has managed the contract with the County and has generated in excess of $11 million dollars in commissions to the County.

19. The undisputed testimony of Marcus Perez provided that Keefe had invested in excess of $300,000 in the contractual relationship it had with the County to upgrade both hardware and software equipment required to perform its services for the County. (*See also* Addendum # 5 to RFP 649).

20. The undisputed testimony of Marcus Perez was that Keefe had entered into two (2) contract extensions with the County to perform services that are the subject of RFP 649. Keefe could have refused to enter into and execute these contract extensions with the County. The last contract extension with the County was effective April 15, 2009, on a month-to-month for up to six months. This last contract extension was executed after the County had deemed Keefe's response to RFP 649 as non-responsive.

16. The evidence shows that Keefe's response to RFP 649 was responsive in all material respects but for the failure to include a signature on the Form A-1. Specifically, Keefe's response contains five (5) other acknowledgment/signatures from Marcus Perez, some notarized, on the following forms:

Form A-2, Lobbyist Registration for Oral Presentations
Form A-3, Acknowledgements of Addenda
Form A-4, Local Business Preference
Form A-5, Proposer's Disclosure of Subcontractors and Suppliers
Form A-6, Fair Subcontracting Policies

(*See* Exhibit H).

17. The undisputed testimony of Marcus Perez was that he was the legally authorized representative to bind Keefe to its response to RFP 649 and as such had executed Forms A-2 through A-6 on behalf of Keefe. The undisputed testimony of Mr. Perez was that the failure to sign the completed Form A-1 was an inadvertent oversight and that Keefe had absolutely intended to be bound by its response to RFP 649.

18. The evidence, including the testimony of Marcus Perez and Amado Gonzalez, the County's own Procurement Officer for RFP 649, shows that Keefe's timely response to RFP 649 contained all the required material information including all technical and pricing specifications and was submitted without any exceptions to the County. Form A-1 was completed and included, but lacked the signature at issue.

19. The testimony of Amado Gonzalez, the County's Procurement Officer for RFP 649, was that the only alleged deficiency in Keefe's response to RFP 649 was the lack of a signature on the Form A-1.

20. Amado Gonzalez further testified that he became the designated procurement officer for RFP 649 sometime in late November 2008 shortly after the interoffice memorandum from Steven Corwin (the former procurement officer for RFP 649) to Assistant County Attorney Hugo Benitez was communicated. (*See* Exhibit I).

21. Amado Gonzalez, testified that he did not undertake any further review of Keefe's response to RFP 649 to determine whether there was "another unequivocal indication of intent to be bound by the offer."

22. The testimony of Amado Gonzalez, was that he relied on the hand-written note of Assistant County Attorney Hugo Benitez on the November 20th interoffice

memorandum although he never communicated with Mr. Benitez directly to determine what, if any, analysis had been done by the County Attorney's Office to determine whether Keefe had provided "another unequivocal indication of intent to be bound by the offer."

23. Amado Gonzalez further testified that he was unaware of any other public record generated by the Procurement Department and/or the County Attorney's Office that provided any analysis to determine whether Keefe had provided "another unequivocal indication of intent to be bound by the offer."

24. Through the testimony of Amado Gonzalez, the County's only witness at the Hearing, it is clear to this Hearing Examiner that there was no further analysis done by the County in this particular case to determine whether Keefe had provided "another unequivocal indication of intent to be bound by the offer."

25. The testimon y of Amado Gonzalez admitted that from November 20, 2008, (the date of the interoffice memorandum questioning whether Keefe's response to RFP 649 was responsive) to January 7, 2009 (the date that Keefe contacted the County about its lack of an invitation for oral presentation) the County undertook no efforts for over six weeks to contact Keefe to notify it of the lack of a signature on the Form A-1 and to inquire whether Keefe intended to be bound by it response to RFP 649.

26. The testimony of Amado Gonzalez admitted that despite Keefe's offer on January 7, 2009 (the same day Keefe became aware of its lack of a signature on the Form A-1) to immediately correct the scrivener's error and fax a signature on the Form A-1, the County refused to accept Keefe's offer to confirm its intent to be bound.

27. The pertinent provisions of RFP 649 state the following:

1.3 General Proposal Information
The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses...or **waive any irregularities** in this Solicitation or **in the responses received as a result of this process**. Proposers may take exceptions to any of the terms of this Solicitation unless the Solicitation specifically states where exceptions may not be taken.

Proposals shall be irrevocable until contract award unless the proposal is withdrawn. **A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date or upon expiration of 180 calendar days after opening of proposals.**

3.1 Submittal Requirements
In response to this Solicitation, the Proposer shall **return the entire completed Proposal Submission Package** (see attached). Proposers should carefully follow the format and instructions outlined therein. **All documents and information must be fully completed and signed as required.**

Proposals that do not include the required documents **may** be deemed non-responsive and may not be considered for award. The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services.

4.1 Preview of Proposals for Responsiveness
Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation. **A responsive proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in Solicitation, is of timely submission, and has the appropriate signatures as required on each document**. Failure to comply with these requirements **may** result in the proposal being deemed non-responsive.

(*emphasis added, See* Exhibit A).

28. All these provisions read in *pari materia* contemplate an exercise of reasonable discretion by the Procurement Department in reviewing any "irregularities" that may or may not result in a proposal being deemed non-responsive.

///

29. Based on the pertinent provisions of the RFP idenitified herein, the signature on the Form A-1 was clearly mandatory. However, the fact that a term or condition is stated in mandatory terms does not necessarily mean that a failure to comply with such term or condition renders a proposal non-responsive. In order for an omission to justify disqualification it must be both *mandatory* and *material*.

30. The evidence shows that from November 20, 2008 (the date Keefe had been deemed non-responsive) to May 29, 2009 (the date the County Manager recommended Aramark for award) is in excess of 180 days of the opening of proposals. Therefore at this time, pursuant to Section 1.3 of the RFP no bidder, including the recommended proposer Aramark, is bound by its proposal and may walk away from the proposed contract with the County.

31. The evidence shows that the recommended proposer Aramark also had the following irregularties that were waived by the County in evaluating its proposal: (i) on the same Form A-1 that is the subject of Keefe's disqualification, although *required*, Aramark failed to identify its subcontractors that it anticipated using for the RFP[2]; (ii) on the Form A-6, "Fair Subcontracting Policies", Aramark was *required* yet failed to submit any detailed statement of its policies and procedures for awarding subcontracts which it made clear in the Form A-5 that it was going use subcontractors; (iii) in response to Proposer Information Request #5 Aramark's failure, although *required*, to include a minimum of five (5) contracts of similar size (number of inmates) and scope of services

[2] Aramark's subcontractors are later identified, as required in response to Form A-5, "Proposer's Disclosure of Subcontractors and Suppliers".

(commissary and banking services)[3]; (iv) in response to Proposer Information Request #20 Aramark's failure, although *required,* to provide a product list for sale that includes the items provided by the current contract or reasonable substitutes[4]; and (v) on the Form B-1, "Price Proposal Schedule", Aramark was *required* yet failed to provide pricing for additional and optional services. (*See* Exhibit J).

32. The evidence, including the testimony of Marcus Perez, Regional Vice President for Keefe and Amado Gonzalez, the County's Procurement Officer for RFP 649, shows that Keefe had not reviewed any of the other bidders' proposals (including Aramark's) until the filing of this Protest and therefore, it had not been privy to any information that could have been deemed to have given Keefe an unfair advantage or benefit not enjoyed by the other bidders. Under the specific facts herein, the County presented no evidence as to how Keefe received some economic advantage by its failure to have executed the Form A-1.

Conclusions

The underlying dispute here is whether the failure to have executed the Form A-1 was a non-waivable material defect or a waivable irregularity based upon on the specific facts presented to this Hearing Examiner. Therefore, this analysis and the conclusions reached are based on the facts as presented at the Hearing and the applicable Florida law that has discussed the distinction between waivable and non-waivable irregularities.

[3] The RFP identifies the inmate population for the County at approximately **7,200** inmates incarcerated in five jail facilities. Aramark's proposal identifies only two (2) other contracts that come anywhere near this inmate population. Further, a third contract identified with Broward County (population **5,500**) may or may not have materialized. (*See* Exhibit J.)

[4] As identified in the RFP, Exhibit A "Commissary Items for Sale", the current vendor [Keefe] offers approximately **490** items for sale of which approximately **260** are food items. Aramark's proposal has approximately **154** total items for sale of which approximately only **68** are food items. (*See* Exhibit J).

Much of the terminology of procurement law in Florida jurisprudence stems from Florida's Administrative Procedures Act, Chapter 120, Florida Statutes. The Florida Administrative Code also provides the general format and context for public contracting procurements. .

Rule 67-49.001 (15) defines "minor irregularity" as follows:

> "Minor Irregularity" **means a variation in a mandatory term** or condition of an Invitation to Bid, Invitation to Negotiate, Request for Proposal or Request for Qualifications **that does not materially affect the price of the commodity or service, or give the Bidder or Offeror an advantage or benefit not enjoyed by other Bidders or Offerors,** and does not adversely impact the interests of the Corporation or the public. (emphasis added) See also Florida Statute 420.507

Rule 67-49.009 defines the circumstances under which a "waiver" is appropriate:

> The [agency] may waive Minor Irregularities in a Response when it is in the [agency] or the public's best interest to do so. *See also* Fla. Stat. 420.507.

Indeed, failure to provide any information or document which is "optional" and not required is not an "irregularity" because by viture of being optional and "non-mandatory," the failure to submit the information does not affect the ability of the procuring agency to properly evaluate the ability of the proposer to perform the services. Therefore, an "irregularity" can only occur in the context of a mandatory term or condition of the RFP.

Florida law clearly holds that in order for a proposal to be non-responsive to the terms and conditions of a Request for Proposal, proof of an irregularity or variance in a mandatory term is simply not sufficient evidence upon which a finding of non-responsiveness can be made. In effect, the fact that an irregularity exists, at best, creates a *prima facia* presumption of non-conformance. However, the regulations and case law

inform the public agencies that additional factors must be evident in order to conclude that an irregularity warrants disqualification.

In *Robinson Electrical Co., Inc. v. Dade Co.*, 417 So. 2d 1032, 1034 (Fla. 3rd DCA 1982) the court set forth the analysis for determining what constitutes a material variance or irregularity. The court stated:

> In determining whether a specific noncompliance constitutes a substantial and hence nonwaivable irregularity, **the courts have applied two criteria-first, whether the effect of a waiver would be to deprive the municipality of its assurance that the contract will be entered into, performed and guaranteed according to its specified requirements, and second, whether it is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition.**
>
> In application of the general principles above discussed, sometimes it is said that a bid may be rejected or disregarded if there is a material variance between the bid and the advertisement. **A minor variance, however, will not invalidate the bid. In this context a variance is material if it gives the bidder a substantial advantage over the other bidders, and thereby restricts or stifles competition.** (*emphasis added*)

Id. at 1034.

Following this well-settled legal principle, the instant RFP 649 specifically provides that the County may waive minor irregularities. Specifically, Section 1.3 General Proposal Information states:

> **The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses;... waive any irregularities in this Solicitation or in the responses received as a result of this process.** (*emphasis added*).

The administrative decision of *First Communication, Inc. v. Department of Corrections*, 07-0630BID, 2007 WL 1047591 (Dept. of Admin. Hr'gs. April 05, 2007) is also instructive here. In *First Communication*, the second lowest bidder, First

Communication, filed a bid protest challenging the Department of Corrections (the "Department") proposed award to the lowest bidder, CES, as arbitrary and capricious based upon the bid's failure to comply with a mandatory requirement of the Invitation to Bid ("ITB"). Section 5.1.2 of the ITB stated: "It is mandatory that the bidder supply one (1) original signed Bid and three (3) copies of the signed bid." While CES had provided the three copies of the Bid, it had inadvertently omitted the original signed copy. As a result of the omission, the Department contacted CES and gave it 24 business hours to "cure" the deficiency.

CES then delivered the original signed bid to the Department three days after the bid submittal deadline in the ITB, but within the 24-business hour deadline given by Department for curing. The ITB further defined "Mandatory Responsiveness Requirements" as "[t]erms, conditions or requirements that must be met by the bidder to be responsive to this solicitation. These responsiveness requirements are mandatory. Failure to meet these responsiveness requirements will cause rejection of a bid. Any bid rejected for failure to meet mandatory responsiveness requirements will not be further reviewed." Thus, as under the instant facts, CES had inadvertently failed to comply with providing a technical but mandatory requirement under the ITB.

In finding that the Department did not act arbitrarily and capriciously in waiving this expressly required component of the ITB, the Hearing Officer explained that this requirement had to be read in light of the established law of Florida and the public policy behind competitive bidding and the other portions of the ITB:

> **However, the Department's duty to reject and not further review bids that fail to meet the mandatory responsiveness requirements must be read in *pari materia* with the Department's authority in the ITB (and well-established case law) to waive minor irregularities in bids that do**

> **not give one bidder an economic advantage over other bidders**. The deficiencies in the bid submitted by CES -- e.g., the failure to include the original bid with the three copies submitted on February 15, 2006, and the reference to a 15-day turnaround time rather than the eight-day turnaround time-- did not confer an economic advantage on CES, and were not shown to be material deviations from the requirements of the ITB. **Thus, the Department was authorized by the ITB and well-established case law to waive those deficiencies.**

First Communication, Inc., 2007 WL 1047591 at *5.

The decision is instructive in demonstrating that the omission of an *expressly mandatory requirement* does not equate to a non-responsive or materially nonconforming proposal but must be read "in *pari materia*" with the relevant rules and policies behind competitive bidding.

Moreover, in *City of Pensacola v. Kirby*, 47 So. 2d 533, 535-536 (Fla. 1950), the Florida Supreme Court stated:

> [T]he law does require that where discretion is vested in a public agency with respect to letting public contracts on a competitive basis, **the discretion may not be exercised arbitrarily or capriciously but must be based upon facts reasonably tending to support the conclusions reached by such agency**. (*emphasis added*)

Id. at 535-536. The evidence presented at the Hearing did not show that Keefe failed to provide anything required by the RFP other than Form A-1 lacked a signature. As admitted by the County's own procurement officer at the Hearing, the sole justification for Keefe's disqualification is that it failed to acknowledge the information that it provided on Form A-1. There was no evidence presented that Keefe failed to understand the information in the Form A-1. The County presented no evidence that the failure to acknowledge the Form A-1 provided Keefe with any unfair competitive advantage over the other proposers. Moreover, it did not in any way affect the price proposed or the

terms of the new agreement. Thus, the lack of a single signature on the Form A-1 certainly cannot be said to have been significant or essential to the County's determination of whether a proposal was in the County's best interest. The lack of a signature on the Form A-1 (in light of 5 other executed signatures presented and a request to cure) is simply a minor irregularity. *See Airport Support Services International, Inc. v. Metropolitan Dade County*, 614 So. 2d 583, 584 (Fla. 3rd DCA 1993)("[t]he purpose of competitive bidding is to secure the lowest responsible offer. That public purpose is best served by construing the bid requirements, if at all reasonable, in a way that would give all bidders an opportunity to compete."); *see also Overstreet Paving Company v. State of Florida, Department of Transportation*, 608 So. 2d 851, 853 (Fla. 2d DCA 1992)(""There is a very strong public interest in favor of saving tax dollars in awarding public contracts. There is no public interest, much less a substantial public interest, in disqualifying low bidders for technical deficiencies in form, where the low bidder did not derive any unfair competitive advantage by reason of the technical omission.").

The County argues that the failure to sign the Form A-1 was a material defect and unwaivable because it gave Keefe an unfair advantage over other bidders who did sign the form. The County argues the lack of a signature was material because it was the form that bound the bidder to the proposal and the County. They further argue that the lack of signature would provide Keefe with an "out" if it chose not to remain in the bid process. Although a bid containing a material variance is unacceptable, not every deviation is considered to be material. It is only considered material if the bidder is given a substantial advantage over other bidders and it thereby restricts or stifles competition. The duty to reject and not futher review bids must be read in *pari material* with the County's

authority to waive minor irregularities. The County here relies on the argument that without the signature on Form A-1 it would deprive the County of such assurance to be bound by its bid and would allow the bidder the option to decide whether to be bound at all.

Yet we must look at the facts of this specific case to determine whether the evidence supports the County's position. There were no facts, no testimony and no evidence to support the County's position. To the contrary, all the substantial undisputed unequivocal evidence presented supports a finding that Keefe intended to be bound by its bid. It's repeated unanswered phone calls to the County representative as to the status of the bid process, the request to be included in the oral presentations, the lack of any evidence that Keefe had in any way received any knowledge of any other bidders' proposals and even if, never intended or requested to change its bid. In fact, through the entire inquiry process and prior to any oral presentations, Keefe was unaware that it had been deemed non-responsive for lack of a signature. Further, once informed, Keefe offered to render an executed Form A-1 without any changes or exceptions to its bid. Clearly, there was no evidence of unafair advantage or alternatively any detriment to the County to review Keefe's bid.

Additionally, because 180 days have passed since the opening of the bids in RFP 649 (through no fault of Keefe's irregularity), all proposers have the option to decide whether to be bound at all. Notwithstanding this, Keefe still stands by and endorses its bid as originally presented without exception. Clearly, all evidence shows Keefe's unequivocal indication of intent to be bound by their offer.

Further, the County presented no evidence that a failure to acknowledge the

information on the Form A-1 would give the County any reason to doubt Keefe' ability to perform under the contract. See Miami-Dade County School Board v. J. Ruiz School Bus Service, Inc., 874 So. 2d 59 (Fla. 3rd DCA 2004). In fact, the opposite is true. At the Hearing Keefe presented substantial and undisputed evidence to show unequivocal indication of intent to be bound by the offer such as: (i) the fact it had been the current provider of services for the County for last eleven (11) years; (ii) the $300,000 already invested by Keefe in its contractual relationship with the County; (iii) Keefe's willingness to enter into contract extensions with the County--the last extension even after the County had deemed its response to RFP 649 as non-responsive; (iv) Keefe's submisison of a timely and complete response to RFP 649 but for the lack of one signature on the Form A-1; and (v) Keefe's immediate willingness to have corrected the scrivener's error upon notice of the lack of a signature.

The County cannot point to any provision of the Code, or any case-law which requires disqualification for failing to acknowledge one form when there is, as here, other unequivocal intent to be bound by the Proposal. Its only defense or justification for recommending disqualification of Keefe is the two sentence hand-written note by the County Attorney's Office that stated, **"[f]ailure to execute a bid or proposal rendered a bid non-responsive. Absent another unequivocal indication of intent to be bound by the offer, the proposal must be rejected."** (*See* Ex. I). The County presented no evidence that any additional analysis had been done to determine whether there was another unequivocal indication of intent to be bound by the offer. The Hearing Examiner believes that Keefe has presented overwhelming evidence of unequivocal intent to be bound by the Proposal and the County's failure to acknowledge any of these other indicia

of intent constitutes arbitrary and capricious action and is contrary to well-established public procurement policy. Again, it is worth noting that due to the fact that 180 days have lapsed since the opening of bids in this RFP 649, according to Section 1.3 of the RFP, no bidder is bound to its proposal as of today and could decide to walk from a proposed contract with the County. Therefore, Keefe and the other bidders all have the same standing in reference to their willingness to do business with the County for RFP 649.

In *Tropabest Foods, Inc. v. State, Dept. of General Services*, 493 So. 2d 50 (Fla. 1st DCA 1986), the court addressed the very issue here and stated that:

> [A]lthough a bid containing a material variance is unacceptable, not every deviation from the invitation to bid is material. **It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition.** (emphasis added)

The issue of whether a bid or proposal complies in all material respects with the RFP naturally involves a consideration of whether that omission "is sufficiently material to destroy its competitive character [such that] the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by the other bidders." *See Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1193 (Fla. 2d DCA 1977) (emphasis added); *see also Emerald Correctional Mngmt. v. Bay County Board of County Commissioners*, 955 So. 2d 647, 652-653 (Fla. 1st DCA 2007).

In *Plasco, Inc. v. Broward County School Bd.*, Case No. 01-3203BID, 2001 WL 1191378 (Fla. Div. Admin. Hr'gs Oct. 9, 2001) the issue revolved around whether un-initialed corrected figures contained within Plasco's bid response for both the unit price and the total cost of Item 1(N) were a material deviations from the bid specifications requiring rejection of the bid. The Hearing Officer found that the School Board had acted

arbitrarily and capriciously in rejecting its bid because the variation with the ITB was not material. The decision held that there was no common sense reason to cost the taxpayers an additional $7,000 due to a violation of technical requirement. *Id.* at *5; *see also Intercontinental Properties, Inc. v. State Dept. of Health and Rehabilitative Services*, 606 So.2d 380, (Fla. 3d DCA 1992) ("There is a strong public policy in favor of awarding contracts to the low bidder, and an equally strong public policy against disqualifying the low bidder for technical deficiencies which do not confer an economic advantage on one bidder over another."); *D. J. Haycook Constr. Co. v. Volusia County*, 200 4 WL 473731,03-4001BID (Div. of Admin. Hr'gs. March 08, 2004) ("The courts do not favor the disqualification of a low bidder for non-responsiveness where a bid irregularity does not impart an unfair competitive advantage to the low bidder.").

As further evidence of the arbitrary and capricious nature of the County's decision, the County is recommending disqualification of Keefe in an RFP contest while specifically waiving other "irregularities" in the recommended proposer Aramark Correctional Services, LLC's ("Aramark") proposal. The evidence shows that Aramark had various irregularites in its response: (i) on the same Form A-1 that is the subject of Keefe's disqualification, although required, Aramark failed to identify its subcontractors that it anticipated using for the RFP[5]; (ii) on the Form A-6, "Fair Subcontracting Policies", Aramark was required yet failed to submit any detailed statement of its policies and procedures for awarding subcontracts which it made clear in the Form A-5 that it was going use subcontractors; (iii) in response to Proposer Information Request #5 Aramark's failure, although required, to include a minimum of five (5) contracts of similar size (number of

[5] Aramark's subcontractors are later identified, as required in response to Form A-5, "Proposer's Disclosure of Subcontractors and Suppliers".

inmates) and scope of services (commissary and banking services)[6]; (iv) in response to Proposer Information Request #20 Aramark's failure, although required, to provide a product list for sale that includes the items provided by the current contract or reasonable substitutes[7]; and (v) on the Form B-1, "Price Proposal Schedule", Aramark was required yet failed to provide pricing for additional and optional services[8]. (*See* Exhibit J). These "irregularities" discovered in the recommended proposer's response are solely meant to illustrate the point of how arbitrary and capricious it was for the County to have deemed Keefe non-responsive for the lack of one (1) signature in light of all the other unequivocal indicia of intent to be bound. *See Compaq Computer Corporation v. Department of Revenue*, 2002 WL 31440728 (DOAH 2002)('An improperly executed signature on a required form is not a material irregularity, particularly, where the intent of the bidder to be bound is evident...The disparate treatment by DOR of similar types of minor technical irregularites in the proposals of other vendors would be arbitrary and capricious and not based on any significant factual or legal difference in the nature and extent of the technical deficiencies).

Arguably, the evidence shows that some of the "irregularities" identified in Aramark's proposal go to the very heart of the substantive requirements of the

[6] The RFP identifies the inmate population for the County at approximately 7,200 inmates incarcerated in five jail facilities. Aramark's proposal identifies only two (2) other contracts that come anywhere near this inmate population. Further, based on the description none of these other contracts provide for banking services. (*See* Exhibit J).

[7] As identified in the RFP, Exhibit A "Commissary Items for Sale", the current vendor [Keefe] offers approximately 490 items for sale of which approximately 260 are food items. Aramark's proposal has approximately 154 total items for sale of which approximately only 68 are food items. (*See* Exhibit J).

[8] Specifically, pursuant to Section 2.15 of the RFP, Aramark was required to provide a $___delivery charge per inmate order for delivery of commissary orders to individual inmates' cells. For example, Keefe submitted as its proposal a $2.25 delivery charge per inmate order. Aramark did not provide the requested information but an alternative commission percentage even though the RFP did not allow for it. (*See* Exhibit J).

specifications such as policies in reference to subcontracting; minimum number of comparable references; and pricing for optional services. For such important and substantive criterion, the County expressly waived these irregularities and deemed Aramark's proposal responsive. However, in the same procurement the County recommends disqualification of a proposer merely because it inadvertently failed to acknowledge one signature which had no impact whatsoever on qualifications, price, or the ability to perform the services—even though the proposer had an unequivocal intent to be bound. This type of decision-making process that seeks to penalize a proposer for matters which do not impact the ability to provide the services can only be characterized as arbitrary and capricious.

RECOMMENDATIONS OF HEARING EXAMINER

Based on the submission of the parties, and the evidence presented at the Hearing, the undersigned Hearing Examiner has concluded that there have been most persuasive arguments made by Keefe to establish that its response to RFP 649 was improperly disqualified for a "minor irregularity," as set forth in its Bid Protest. The Hearing Examiner therefore finds that the the protester, Keefe, has established valid grounds to maintain and sustain its protest. The Hearing Examiner consequently recommends that the County Manager's Recommendation of Award of the Contract for RFP NO. 649: INMATE COMMISSARY AND BANKING SERVICES be rejected based on the fact that Keefe has established that it was a responsive and responsible bidder and its failure to inadvertently execute the Form A-1 was a minor irregularity that should have been waived by the Miami-Dade County Department of Procurement Management in light of Keefe's unequivocal intent to be bound and the lack of any economic advantage or

benefit to Keefe as a result of such waiver. The failure to waive such a minor irregularity in Keefe's response to RFP 649 under the totality of evidence presented and where no effort was made by the County to determine other indications of intent to be bound would constitute arbitrary and capricious conduct by the Miami-Dade County Department of Procurement Management.

For the reasons set forth above, and under the authority set forth in Section 2-8.4 of the Code of Miami-Dade County, the undersigned Hearing Examiner recommends the County Manager's Recommendation of Award of the Contract for Contract Inmate Commissary and Banking Services for four (4) years with six (6) one year options to renew, RFP NO. 649: INMATE COMMISSARY AND BANKING SERVICES to Aramark be rejected and allow for Keefe's response to be scored and included in the evaluation process of this RFP 649.

Dated this 1st day of July, 2009.

Loree Schwartz Feiler
Hearing Examiner