

Memorandum



Date: February 1, 2011
To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Supplement
Agenda Item No. 8(O)(1)(B)

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

A handwritten signature in black ink, appearing to read "R. A. Cuevas, Jr.", written over the printed name.

Subject: Legal Opinion Regarding : Agenda Item No. 8(O)(1)(B)

I write this memorandum to clarify Agenda Item No. 8(O)(1)(B) which requests that the Board concur with the recommendation of the Clerk of the Circuit and County Courts (the "Clerk") to award certain contracts for debt collection services. Unlike other items considered by the Board where the County is the awarding entity, these contracts are to be awarded by the Clerk. Accordingly, while the Board may agree or disagree with the Clerk's recommendation, the Clerk, not the County, is authorized to make a contract award.

Background

The Clerk is authorized by law to contract for debt collection services. *See* Section 28.246 (6), Fla. Stat. (2010). The Clerks' authority to contract for those services is grounded upon Article V of the Florida Constitution. The law contains a parallel authorization for the County to contract for debt collection services. *See* Section 938.35, Fla. Stat. (2010). This Board, by Resolution No. R-1204-98, expressly delegated to the Clerk the authority to solicit debt collection services, adhering to applicable County procurement practices in doing so.

On or about April 2010, the County, at the request and on behalf of the Clerk, issued RFQ No. 723 to establish a debt collection services pool (the "RFQ"). The RFQ stated in no uncertain terms that the Clerk would award any contract resulting from the solicitation. *See* Sections 1.1, 2.1, 2.4, and 4.8 of the RFQ. The RFQ specifically provides that "[n]otwithstanding the rights of protest listed below, the Clerk's decision of whether to make the award and to which Proposer shall be final." Section 4.8 of the RFQ. The contract to be entered into, as indicated in the form contract attached to the RFQ, is between the Clerk and the successful proposer(s).

In adherence with the County's procurement practices, Section 4.9 of the RFQ provides that a recommendation for award or rejection of the 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."

Pursuant to Section 4.9 of the RFQ, Gila Corporation d/b/a Municipal Services Bureau (“MSB”) protested the Clerk’s recommendation to award to another four vendors. In connection with the protest, the issue arose as to whether the Clerk would submit his recommendation for contract award for approval by the Board and the parties stipulated that he would.

This matter now comes before you for evaluation of the Clerk’s recommendation for award.

Opinion

By issuing the RFQ, the Clerk has not relinquished his authority to award these contracts. The RFQ expressly states the contrary. Thus, while in the ordinary award of County contracts this Board is authorized to both resolve the bid protest and award the contract(s), in the matter under consideration, the Board is simply being requested to resolve the bid protest because of the procedural protections afforded in the RFQ. While the Board retains its full discretion to agree or disagree with the Clerk’s decision in light of the Hearing Examiner’s recommendation, the ultimate discretion of whether to award the contracts, and to whom, ultimately remains with the Clerk. If the Clerk were to disagree with this Board’s resolution of the protest, however, based on the RFQ documents and the stipulation between the parties, it is my opinion that the Clerk may not issue an award under the RFQ in question.

cc: Harvey Ruvlin, Clerk of the Courts
Carlos Alvarez, Mayor
George M. Burgess, County Manager
Miriam Singer, Director, Procurement Management