

Memorandum

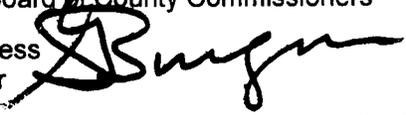
MIAMI-DADE
COUNTY

Date: March 15, 2011

Supplement to
Agenda Item
No. 8(0)1c

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager



Subject: Supplement to Contract Award Recommendation for Water Meter Box Covers

This supplemental report is provided to update the Board on the status of the contract award recommendation for A & B Pipe and Supply Inc., and Technical Trading Corporation. On December 27, 2010, Mr. Ray Corona, from Corcel Corporation filed a bid protest. Attached please find a report from the hearing examiner dated January 28, 2011 for the bid protest hearing which was held on January 25, 2011. The hearing examiner upheld the County Manager's recommendation to award to A & B Pipe and Supply Inc., and Technical Trading Corporation. Since then Mr. Corona has continued to raise issues with both Commissioners and staff. The bid protest process is the appropriate avenue to raise issues and concern with the procurement process. Staff has, however, reviewed all subsequent correspondence and has met with Mr. Corona. Aside from the issues raised at the hearing, it is important to note two very important facts. Mr. Corona's product (the water meter covers) did not fit the water meter boxes at the time of bid, and the product has not been tested in the field. WASD operations and field staff does not recommend the purchase of an untested product.

In light of the hearing examiner's support of the staff position, the fact that there have already been two solicitations issued for this product causing delays, and WASD is in need of this product to begin their transition to the Automated Meter Reading System, which involves the use of electronic devices that read water and other meters automatically, it is recommended that the Board approved this one year contract for \$240,000. While the item does provide for four options to renew, staff from both DPM and WASD will conduct appropriate market research before each renewal to determine if a new procurement should be conducted based on changes in the market and product availability. During this one year period WASD is willing and interested in testing Mr. Corona's product (and any other new product) in the field in order to procure the best available product at the best available price. A report will be provided to the Board before the options to renew is exercised.


Assistant County Manager



Harvey Ruvin
CLERK OF THE CIRCUIT AND COUNTY COURTS
Miami-Dade County, Florida

CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK MIAMI-DADE GOVERNMENT CENTER

SUITE 17-202
111 N.W. 1st Street
Miami, FL 33128-1983
Telephone: (305) 375-5126
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January 28, 2011

Mr. Ray L. Corona
Vice President and Managing Director
Corcel Corp.
2461 N.W. 23rd Street
Miami, Florida 33142

Re: Bid Protest – Bid No. 8958-4/15
Water Meter Box Covers

Dear Mr. Corona:

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation filed by the hearing examiner in connection with the foregoing bid protest hearing which was held on January 25, 2011.

Should you have any questions regarding this matter, please do not hesitate to contact Fara C. Diaz at (305) 375-1293.

Sincerely,
HARVEY RUVIN, Clerk
Circuit and County Courts

By *Diane Collins*
Diane Collins, Division Chief
Clerk of the Board Division

DC/fcd
Attachments

cc: Honorable Carlos Alvarez, Mayor, Miami-Dade County (via email)
George Burgess, County Manager (via email)
Hugo Benitez, Assistant County Attorney (via email)
Henry Gillman, Assistant County Attorney (via email)
Miriam Singer, Director, Dept. of Procurement Management (via email)
Albert Touriz, Senior Procurement Contracting Agent, DMP (via email)
Walter Fogarty, DPM (via email)
John Renfrow, Director, Miami-Dade Water & Sewer Dept. (via email)
Kevin J. Taylor, Esq. (via email)
Ricardo R. Corona, Esq. (via email)
Augusto Maxwell, Esq. (via email)
Enrique Collazo, Esq. (via email)
All Bidders (via US mail)

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**IN RE: BID PROTEST OF CORCEL CORP. OF RECOMMENDATION OF AWARD
FOR CONTRACT FOR ITB NO.8954 -4/15 WATER METER BOX COVERS**

REPORT AND RECOMMENDATION OF HEARING EXAMINER

PRELIMINARY STATEMENT

This matter concerns a bid protest filed by Corcel Corp. ("Corcel") challenging the County Manager's recommendation to award a contract for the purchase of Water Meter Box Covers for the Miami-Dade Water and Sewer Department through Invitation to Bid ("ITB") No. 8954-4/15.

The final hearing took place on January 25, 2010 in accordance with Section 2-8.4 of the Code of Miami-Dade County and Implementing Order No. 3-21. Testimony and exhibits were received from Corcel, Miami-Dade County ("County") and Intervenor A & B Pipe Supply Inc. ("A & B Pipe")

All participants were represented by legal counsel. Kevin Taylor, Esq. of Kevin J. Taylor, P.A. represented Corcel, Henry Gillman, assistant county attorney, represented Miami-Dade County and Augusto Maxwell represented A & B Pipe.

The Hearing Examiner, in arriving at this recommendation, has considered all documentation submitted, as well as the testimony and evidence presented at the hearing, including the technical and other specifications and conditions required by the County as part of the ITB and the bidding process. The Hearing Examiner also considered the technical testing and evidence regarding the composition and specifications required for the subject water meter covers as well as the denial of the protestor's bid and the reasons it was denied.

Although the Hearing Examiner does not recite each and every statement in the testimony of the witnesses, the Hearing Examiner has nonetheless considered the testimony of the witnesses and the probative value of the evidence presented and the witnesses testimony.

FINDINGS OF FACT

1. In December 2008, the Miami-Dade Water and Sewer Department ("WASD") announced pilot testing of Automated Meter Reading Systems to remotely read water meters.
2. Pursuant to that pilot, the County advertised and Invitation to Bid ("ITB") for water meter covers on April 16, 2010.

3. Section 2.1 of the ITB provides that the purpose of the solicitation is to establish a contract for the purchase of water meter box covers in conjunction with the County's needs on an as needed when needed basis.
4. The ITB is very specific in the requirements for the meter covers. For example, Section 3.3 of the Technical Specifications require that meter covers be manufactured of recycled composite plastic, RHC Rubber and a UV stabilizer material. It further required meter covers to be H-20 load rated and non-metallic for radio read.
5. Further, Section 3.3 provides that "all standard water meter covers shall be similar to Pentek Access Boxes or approved equal."
6. Section 3.5 of the ITB provides for a buoyancy testing procedure to ensure that the covers do not float.
7. Corcel submitted a bid proposing the County purchase "RHINO" covers manufactured by , Southeastern Distributors, Inc. Other bids proposed the County purchase the Pentek product mentioned in paragraph 5 herein.
8. Corcel's bid included information to show that its meter cover was similar to Pentek or an approved equal.
9. Upon the receipt of Corcel's sample meter covers, the County submitted both the RHINO and the PENTEK covers to a buoyancy test.
10. During or shortly after that test, WASD observed an unknown white substance that was embedded throughout one of the RHINO meter cover.
11. The County's submission stated that the white substance crumbled when scratched, however the Hearing Examiner did not hear such evidence.
12. Corcel's meter cover was sent to a laboratory for testing of the white substance. The PENTEK cover was not sent for similar testing.
13. The laboratory found that the substance was similar to "possible barium sulfite."
14. Upon learning of the laboratory test results, Corcel submitted a letter from the manufacturer, Southeastern Distributors, Inc. ("Rhino") which stated that the substance is "barium sulfate" and provided its percentage as well as percentages of other materials in the composition of the covers. Therein lies the rub.
15. There is a disputable issue as to the percentage of barium sulfate, UV stabilizer, and RHC rubber in the Rhino cover.
16. Corcel presented letters (one in the form of an affidavit, though not verified), which the Hearing Examiner considered at the hearing.

17. Notwithstanding multiple submissions by Corcel (not enumerated here) as to the composition of its Rhino product, the County Manager rejected Corcel's bid for multiple reasons, including that the UV stabilizer material in Corcel's water meter covers contained barium which is a metal and is not a recycled material.
18. Following the Recommendation for Award, Corcel timely filed its bid protest and this hearing was held.
19. The Manager rejected Corcel's bid because the Rhino product did not meet the bid specifications including the nonmetallic and recycled materials requirements.
20. Corcel's protest took issue with the County's recommendation on several fronts, and Corcel's argument included:
 - a) *The specifications do not require the UV Stabilizer component in the product to be recycled material.*
 - b) *The specifications do not require the UV stabilizer component of the product to be non-metallic.*
 - c) *The non-metallic requirement is solely for the purpose of radio read capability and the barium, while a metal, does not impede the RHINO products, radio read capability.*
 - d) *The manufacture of the RHINO products have been supplying similar, but not identical, products to state and local agencies throughout Florida and otherwise, for well over 10 years.*
 - e) *The Barium in the RHINO covers is an "earth" metal that will have no hazardous effect on the environment, as compared to the Pentek product which, according to Pentek themselves, is "produced with less than the maximum allowable levels of the following substances: Lead, Mercury, Cadmium, Hexavalent Chromium, PBB and PBDE."*
 - f) *Corcel argued that the first four (4) of these six (6) substances are metals. All six substances are highly toxic and even in less than the restricted substance level will still some adverse effect on the environment.*
 - g) *Vendor's who bid the PENTEK product submitted documents which indicated that the PENTEK UV stabilizer was composed of a non recycled material.*

- h) *Corcel's bid was 44% lower than the other bids and in the event of the full implementation of the AMR / Water Loss Reduction initiate this difference would result in a savings to the county of over 5 Million dollars.*
21. Juan Pelay, Assistant Superintendent for the Miami-Dade Water and Sewer Department's Meter Installation and Maintenance Section, testified that he was responsible for the 2008 Pilot Project which resulted in the installation of over 1000 Pentek meter covers.
22. Mr. Pelay testified that the Pentek meter covers have been in use in Miami-Dade County since 2008 and that they work well with no complaints by either consumers or by the technical workers in the field.
23. Section 2.6.1.1 of the Special Conditions of the ITB specifically requires that "the items to be purchased hereunder shall be the products of a manufacturer that has been regularly engaged in the production of water meter box covers as specified for a minimum period of at least two (2) years.
24. The Rhino product submitted by Corcel has not been in the field for two years as required by the ITB.

LEGAL STANDARD OF REVIEW AND DISCUSSION

It is well-settled Florida law that "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 may disagree." *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505 (Fla. 1982); *Miami-Dade County v. Church & Tower, Inc.* 715 So. 2d 1084, 1089 (Fla. 3rd DCA 1998). "The hearing officer's sole responsibility [in reviewing a protest] is to ascertain whether the agency acted fraudulently, arbitrarily, illegally or dishonestly." *Department of Transportation v. Groves-Watkins Constructors*, 530 So.2d 912, 914 (Fla. 1988). The hearing examiner cannot step into the shoes of the County Manager and become the contracting authority. See e.g., *Miami-Dade County v. Church & Tower, Inc.* 715 So. 2d 1084, 1089 (Fla. 3rd DCA 1998).

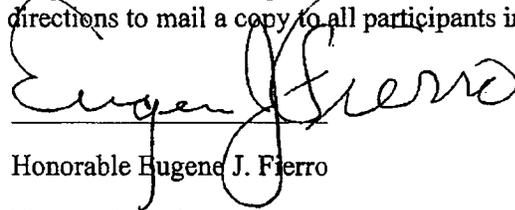
Corcel alleges that the County Manager's rejection of Corcel's bid was arbitrary. The burden is on Corcel to establish that the County Manager acted in an arbitrary and capricious manner and that there was no sound basis for the Manager's decision. In attacking a contracting entity's decision on arbitrariness, "the test is 'whether the contracting agency provided a coherent and reasonable explanation of its exercise of discretion, and the disappointed bidder bears a 'heavy burden' of showing that the award decision had no rational basis.'" *Impresa Construzioni Geom. Domenico Garuffi v. United States*, 238 F.3d 1324, 1332 (Fed. Cir. 2001) (citing *Saratoga Dev. Corp. v. United States*, 21 F.3d 445, 456 (D.C. Cir. 1994).

Since the evidence submitted by Corcel is insufficient to demonstrate that the County's action was arbitrary, illegal, dishonest or fraudulent, the protest filed by Corcel is hereby denied.

RECOMMENDATION

Based upon due consideration of the witnesses, exhibits, law, argument of counsel and foregoing findings, the County Manager did not act arbitrarily or capriciously in rejecting Corcel's bid. It is therefore Recommended that the County Manager's recommendation to award Contract for ITB No. 8958-4/15 to A & B Pipe and Technical Trading Corporation be upheld.

This Report and Recommendation of the Hearing Examiner is being filed with the Clerk of the Board on this 27 day of January, 2011, with directions to mail a copy to all participants in the Bid Protest proceedings.



Honorable Eugene J. Fierro
Hearing Examiner