

# Memorandum



**Date:** September 1, 2011

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

**From:** Alina T. Hudak  
County Manager

Agenda Item No. 8(O)(1)(E)

**Subject:** Recommendation for Approval to Award: Protective Clothing for Miami-Dade County Fire Fighters

## RECOMMENDATION

It is recommended that the Board of County Commissioners approve award of this contract to the bidders listed below for purchase of protective clothing for Miami-Dade Fire Rescue.

**CONTRACT NUMBER:** 9186-0/15

**CONTRACT TITLE:** Protective Clothing for Miami-Dade County Fire Fighters

**TERM:** Five years

**CONTRACT AMOUNT:** \$5,884,000

### **USING/MANAGING AGENCY, AND FUNDING SOURCE:**

<u>Department</u>	<u>Allocation</u>	<u>Funding Source</u>	<u>Contract Managers</u>
Fire Rescue	\$5,884,000	Fire District Funds/ General Fund	Marianela Betancourt
<b>Total</b>	<b>\$5,884,000</b>		

**PREVIOUS CONTRACT AMOUNT** \$5,802,000 for a sixty-three month term

**PROCUREMENT CONTRACTING OFFICER:** Abelin Rodriguez

**METHOD OF AWARD:** Groups 1 through 5 - Bunker Gear Ensembles, to be awarded to the two responsive and responsible bidders offering the lowest aggregate price per group.

Group 6 - Wild Land Ensemble, to be awarded to the two responsive and responsible bidders offering the lowest aggregate price per group.

Group 7 - Helmets, to be awarded to the two responsive and responsible bidders offering the lowest aggregate price per group.

Group 8 – Boots, to be awarded to the two responsive and responsible bidders offering the lowest aggregate price per group.

Group 9 Item 1 – Gloves, to be awarded to the two responsive and responsible bidders offering the lowest price.

Group 9 item 2 - Gauntlet Gloves, to be awarded to the two responsive and responsible bidders offering the lowest price.

Group 9 item 3 - Protective Hoods, to be awarded to the two responsive and responsible bidders offering the lowest price.

**VENDORS  
 RECOMMENDED  
 FOR AWARD:**

<b>Vendor</b>	<b>Address</b>	<b>Principal</b>	<b>Groups Awarded</b>
Bennett Fire Products Co., Inc. (Non-local vendor)	195 Stockwood Dr. Suite 170 Woodstock, GA 30188	Richard D. Bennett	Primary: Groups 5, 6,7, 8 and items 1 & 2 for Group 9
Lion Apparel, Inc. (Non-local vendor)	6450 Poe Ave. Ste. 300 Dayton, OH 45414	Andrew Schwartz	Primary: Group 1
Municipal Equipment Co., LLC (Non-local vendor)	2049 West Central Blvd. Orlando, FL 32805	Robert J. Fenneman	Secondary: Group 6, 7, 8 and Items 1 and 3 for Group 9
Municipal Emergency Services, Inc. (Non-local vendor)	7 Poverty Road 85H Bennett Square Southbury, CT. 06488	Thomas X. Hubregsen	Primary: Group 9 (item 3)  Secondary: Group 1

**VENDORS NOT  
 RECOMMENDED  
 FOR AWARD:**

The following vendors are not recommended for award.

ADC America, Inc. did not bid all items in Group 7 and was deemed non-responsive by the County Attorney Office (CAO) (opinion is attached).

Cason Investments, Inc. submitted multiple unit prices for the same item in Group 9 and was deemed non-responsive by the CAO (opinion is attached).

Design Lab, Inc. has no experience in providing fire fighter protective gear. This is a factor in measuring, fitting and altering of uniforms. The company was deemed not

responsible for Groups 1 through 5 following a detailed review by the Department of Procurement Management and Miami-Dade Fire Rescue Departments, because they have not experience selling this type of products.

LESC, Inc. withdrew its bid for Groups 6, 8 and 9, because pricing of the material used in the manufacturing of the uniforms increased, and they could not hold bid price.

Lion Total Care Inc. submitted pricing for an option that was later withdrawn.

Morning Pride Manufacturing, Inc. d/b/a Honeywell First Responder Products did not provide samples for Groups 1, 3 and 5 for evaluation as is required under Section 2.0, paragraph 2.9 and paragraph 2.27 of the solicitation, and was deemed non-responsible.

Safety Solutions, Inc. now known as Municipal Emergency Services, Inc. did not bid all items in Group 7 and was deemed non-responsive by the County Attorney's Office (CAO opinion is attached).

Viking Life Safety Equipment, Inc. did not meet bid specifications. Per Section 3.0, paragraph 3.4.13, jacket pockets are required to be fully lined with Kevlar. This safety feature strengthens the pocket and prevents sharp objects from piercing through the uniforms. This company's pockets were not fully lined with Kevlar.

Ten-8 Fire Equipment, Inc. advised they cannot hold their prices for Group-6, and Groups 5, 7, 8, and 9 (items 1 & 2).

**PERFORMANCE**

**DATA:**

There are no performance issues with the recommended firms.

**COMPLIANCE DATA:**

There are no compliance issues with the recommended firms.

**CONTRACT  
MEASURES:**

The Small Business Enterprise Bid Preference was applied in accordance with the Ordinance but did not affect the outcome.

**LIVING WAGE:**

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

**USER ACCESS  
PROGRAM:**

The User Access Program provision will apply. The 2% program discount will be collected on all purchases.

**LOCAL PREFERENCE:**

Local Preference was applied in accordance with Ordinance. The preference did not affect the award of the contract.

**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, contract modifications, subsequent options-to-renew and other extensions in accordance with the terms and conditions of the contract.

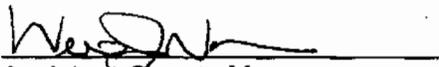
### **BACKGROUND**

Miami-Dade Fire Rescue Department (MDFR) will use this contract for purchase of protective helmets, hoods, boots, and gloves. This equipment protects fire fighters when responding to structural, aircraft, and wild land fires. All recommended firms have items listed that meet National Fire Protection Association Standards. Groups 1 through 4 provide for protective ensembles manufactured with differing types of protective cloth. After evaluation of the available gear, MDFR recommended that Groups 2 through 4 be rejected. The material composition of the items offered in Group 1 is the best suited for County firefighters.

This contract is a consolidation of the following commodities which have previously been purchased through various contracts: Bunker Gear, Hoods and Footwear, Gloves, Wild Land Gear, Footwear and Protective Gear. This award allows purchase of fire-fighting protective gear under one consolidated contract while providing competition, good pricing, safe uniforms and gear, and an efficient contract management approach.

The vendors recommended for award originally submitted their bids on November 13, 2009. In order to determine if the pricing is still competitive, the Department of Procurement Management conducted market research in June 2011 to analyze current market prices against the prices obtained through this solicitation process. Market research confirmed that if this recommendation to award is approved, the County will be paying prices that are more favorable than those available in the market.

Staff contacted all vendors recommended for award and to confirm that the pricing submitted in 2009 would be honored during the entire contract term. All vendors recommended for award agreed to honor their pricing with the exception of Ten-8 Fire Equipment (Ten-8). Ten-8 was primary for Group 6 and secondary for other items. Bennett Fire Products, Inc. was the next low bidder for Group 6 and pricing was comparable to that of Ten-8. Bennett Fire Products, Inc. is being recommended as primary for Group 6.

  
Assistant County Manager



# MEMORANDUM

(Revised)

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

**DATE:** September 1, 2011

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

**SUBJECT:** Agenda Item No. 8(O)(1)(E)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(O)(1)(E)  
9-1-11

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING AWARD OF COMPETITIVE CONTRACT 9186 PROTECTIVE CLOTHING FOR MIAMI-DADE COUNTY FIRE FIGHTERS IN THE AMOUNT OF \$5,884,000; AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE CONTRACT OPTIONS; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONTAINED THEREIN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board approves the award of contract 9186-0/15: Protective Clothing for Miami-Dade County Fire Fighters, in the amount of \$5,884,000, authorizes the County Mayor or County Mayor's designee to exercise contract options, authorizes the County Mayor or County Mayor's designee to exercise any and all other rights contained therein.

The foregoing resolution was offered by Commissioner \_\_\_\_\_ who moved its adoption. The motion was seconded by Commissioner \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of September, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Oren Rosenthal



# Memorandum



**Date:** December 8, 2009  
**To:** A. Rodriguez  
Sr. Procurement Contracting Officer  
**From:** Oren Rosenthal  
Assistant County Attorney  
**Subject:** Responsiveness of Proposals – ITB No. 9186-0/15 Protective Clothing for Miami-Dade Fire Rescue Department

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You have asked this office if proposals from Cason Investments, Inc. ("Cason"), Lion Apparel, Inc. ("Lion Apparel"), and Lion Total Care, Inc. ("Lion Total") are responsive to the above referenced Invitation to Bid ("ITB"). For the reasons set forth below, we conclude that Cason's bid is non-responsive to Group 9 of the ITB and Lion Apparel and Lion Total's bids are subject to a collusion review by the department.

## FACTS

We rely on the information provided in your memorandum to this office dated December 4, 2009 attached hereto and the ITB and the bids of the vendors.

In your memorandum you advise the following that Cason "submitted duplicate page 54 on which it provided different prices for the items in Group 9 of the bid." For each of the three items in Group 9, Cason has provided a dramatically different price bid on each of the duplicate sheets. You also advise that both Lion Apparel and Lion Total's "bids were signed by the same person and show the same Federal Employee Identification Number (FEIN)."

## DISCUSSION

Based on the facts set forth above, Cason's bid for Group 9 is non-responsive. Cason's bid contains differing unit prices for the same items. The County cannot determine Cason's prices for the items in Group 9. Without being able to determine the unit prices Cason actually intended, the County is deprived the assurance that the contract would be entered into and performed pursuant to a set price.

The Lion bids do not raise an issue of responsiveness. Rather this issue is one of compliance with our collusion ordinance. Staff should follow the procedures set forth in 2-8.1.1 of the Code of Miami-Dade County in analyzing the potential for collusion and the required response.

  
Oren Rosenthal



## MEMORANDUM

Agenda Item No. 7(D)

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**TO:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**DATE:** October 7, 2008

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

**SUBJECT:** Ordinance amending  
Sections 2-8.1.1 and  
10-33.1 the Code of  
Miami-Dade County  
relating to bids from  
related parties

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**This Ordinance was amended at the Budget and Finance Committee at the request of the sponsor to clarify that the proposed ordinance would also address collusion in license agreements and that any bidder who violates this ordinance will be referred for prosecution.**

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Joe A. Martinez and Co-Sponsor Commissioner Rebeca Sosa.

A handwritten signature in black ink, appearing to read "RAC", written over a horizontal line.

R. A. Cuevas, Jr.  
County Attorney

RAC/cp

X

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# Memorandum

MIAMI-DADE  
COUNTY

**Date:** October 7, 2008.

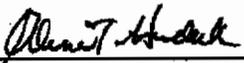
**To:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**From:** George M. Ebersole  
County Manager

**Subject:** Ordinance amending Sections 2-8.1.1 and 10-33.1 of the Code of Miami-Dade County relating to bids from related parties

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The Ordinance relating to bids from related parties will not have a fiscal impact to Miami-Dade County.

  
\_\_\_\_\_  
Susanne M. Torriente  
Chief Assistant County Manager

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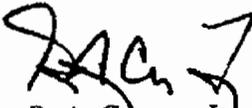


# MEMORANDUM

(Revised)

**TO:** Honorable Bruno A. Barreiro  
and Members, Board of County Commissioners

**DATE:** October 7, 2008

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

**SUBJECT:** Agenda Item No. 7(D)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

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Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 7(D)  
10-7-08

ORDINANCE NO. \_\_\_\_\_

ORDINANCE AMENDING SECTIONS 2-8.1.1 AND 10-33.1 OF THE CODE OF MIAMI-DADE COUNTY RELATING TO BIDS FROM RELATED PARTIES TO INCLUDE A PROHIBITION ON COLLUSIVE BIDDING, REQUIRING THAT RECOMMENDED BIDDERS SUBMIT AN AFFIDAVIT REGARDING THEIR RELATION TO OTHER BIDDERS, AND EXPAND THE PROHIBITIONS TO INCLUDE THE PURCHASE OF GOODS OR SERVICES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS  
OF MIAMI-DADE COUNTY, FLORIDA:**

**Section 1.** Section 2-8.1.1 of the Code of Miami-Dade County, Florida, is amended as follows:<sup>1</sup>

**Sec. 2-8.1.1. Bids from related parties >>and bid collusion<< for the purchase of >>goods and services,<< leases, permits, concessions and management agreements.**

>>(a)<< Notwithstanding any other provision of this Code, where two (2) or more related parties each submit a bid or proposal for any County >>purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.),<< lease, permit, >>licensing agreement,<< concession or management agreement, such bids or proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers or the principals >>, corporate officers, and managers<< thereof which have a direct or indirect ownership interest in

<sup>1</sup> Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. The remaining provisions are now in effect and remain unchanged.

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another bidder or proposer for the same agreement or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

>>(b) All bids or proposals submitted for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.), lease, permit, concession or management agreement must be genuine and not sham or collusive, or made in the interest or on behalf of any person not therein named, and the contractor may not have, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. Any bid or proposal submitted in violation of this subsection shall be rejected and the proposer shall be subject to debarment and >>referred for prosecution.

(c) A contractor recommended for award as the result of a competitive solicitation for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Fla Stats.), purchase, lease, permit, concession or management agreement shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the County: stating either that the contractor is not related to any of the other parties bidding in the competitive solicitation or identifying all related parties, as defined in this Section, which bid in the solicitation; and attesting that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted in accordance with the provisions of this Section. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.<<

**Section 2.** That Section 10-33.1 of the Code of Miami-Dade County, Florida, is amended as follows:

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**Sec. 10-33.1. Bids precluded from related parties  
>>and colluding bidders<<**

>>(a)<< Notwithstanding any other provision of this Code, when two (2) or more related parties each submit a bid or proposal for any construction contract subject to this article, such bid or proposal shall be presumed collusive. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bids or proposals. Related parties shall mean bidders or proposers, or principals>>, corporate officers, and managers<< thereof which have a direct or indirect ownership interest in another bidder or proposer for the same contract or in which a parent company or the principals thereof of one (1) bidder or proposer have a direct or indirect ownership in another bidder or proposer for the same contract. Bids or proposals found to be collusive shall be rejected.

>>(b) All bids or proposals submitted for any for any construction contract must be genuine and not sham or collusive or made in the interest or in behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. Any bid or proposal submitted in violation of this subsection shall be rejected and the proposer shall be subject to debarment.

(c) A contractor recommended for award as the result of a competitive solicitation for any County construction contract shall, within five (5) business days of the filing of such recommendation, submit an affidavit under the penalty of perjury, on a form provided by the County: stating either that the contractor is not related to any of the other parties bidding in the competitive solicitation or identifying all related parties, as defined in this Section, which bid in the solicitation; and attesting that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted in accordance with the provisions of this Section. Any person or entity that fails to submit the required affidavit shall be ineligible for contract award.<<



**Section 3.** If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

**Section 4.** It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**Section 5.** This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as  
to form and legal sufficiency:



Prepared by Oren Rosenthal



Prime Sponsor: Commissioner Joe A. Martinez  
Co-Sponsor: Commissioner Rebeca Sosa

# Memorandum



*Over*

**Date:** December 4, 2009

**To:** R. A. Cuevas Jr.  
County Attorney's Office

**From:** A. Rodriguez *[Signature]*  
Sr. Procurement Contracting Agent  
Department of Procurement Management

**Subject:** Request for Responsiveness Determination on ITB No. 9186-0/15:  
Titled, Protective Clothing for Miami-Dade Fire Rescue Department

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Subject bid was publically opened on November 13, 2009. During the evaluation of the bids received, questions about the responsiveness of Cason Investments, Inc., Lion Apparel, Inc. and Lion Total Care, Inc. have arisen.

Cason Investments, Inc. submitted duplicate page 54 on which it provided different prices for the items in Group 9 of the bid.

Lion Apparel, Inc. provided prices for equipment and for the optional cleaning of the equipment.

Lion Total Care, Inc. provided prices for only the cleaning of the equipment.

Both Lion Apparel, Inc's and Lion Total Care, Inc's bids were signed by the same person and show the same Federal Employee Identification Number (FEIN),

The questions are: whether Cason Investments, Inc's bid for the items in group 9 are responsive, and are the Lion bids responsive.

If you have any questions, please contact me at (305) 375-4258.

Encl: Copy of Cason Investment, Inc bid  
Copy of Lion Apparel, Inc. bid  
Copy of Lion Total Care, Inc. bid  
Copy of invitation to Bid #9186-0/15

# Memorandum



**Date:** August 24, 2010  
**To:** Abelin Rodriguez  
Department of Procurement Management  
**From:** Eduardo W. Gonzalez  
Assistant County Attorney  
**Subject:** ITB No. 9186-0/15 (Protective Clothing for Miami-Dade County Firefighters)  
Bidder: Safety Solutions, Inc.

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You have asked this office if the bid submitted by Safety Solutions, Inc. ("Safety Solutions") for Group 7 of ITB No. 9186-0/15 (Protective Clothing for Miami-Dade County Firefighters) is responsive. For the reasons set forth below, we conclude that Safety Solution's bid for Group 7 of the aforementioned bid is *non-responsive*.

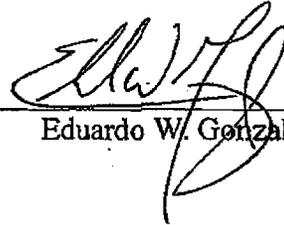
## FACTS

We rely on the information provided in your August 18, 2010 memorandum to Hugo Benitez regarding the bidding issues, our meeting on the bidding issues, the terms of the ITB itself and the bid submitted by Safety Solutions. The purpose of the ITB is to establish a contract for the purchase of firefighter protective clothing for Miami-Dade Fire Rescue in conjunction with the County's needs on an as needed when needed basis. The terms of the solicitation required vendors to submit bids on different groups and items of protective clothing. Eight (8) groups (Groups 1 – 8) are awarded on a *group-by-group basis* to the two lowest priced, responsive and responsible vendors. Accordingly, to be considered for award for Groups 1 – 8, the vendor is required to submit prices for all the items in a given group. For the Group 7 bid, Safety Solutions did not provide bid prices on all the items in Group 7.

## DISCUSSION

In general, a bid may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. See Robinson Elec. Co. v. Dade County, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). The determination of whether a variance or irregularity is minor is fact specific and may differ from bid to bid. Florida courts have used a two part test to determine if a specific noncompliance in a bid would constitute a substantial and, thus, nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers. See Glatstien v. City of Miami, 399 So. 2d 1005 (Fla. 3d DCA 1981).

Based on the facts set forth above, Safety Solutions' bid for Group 7 is nonresponsive. Safety Solutions' failure to provide prices on all the items in Group 7 deprives the County of the assurance that the contract will be performed and guaranteed in accordance with the terms of the solicitation. Because the solicitation clearly provided that the awards would be on a group-by-group basis and, accordingly, to be eligible for award for a group, the vendor must submit prices for *all* of the items in a group, Safety Solutions' bid for Group 7 is incomplete and non-responsive.



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Eduardo W. Gonzalez

# Memorandum



**Date:** May 12, 2010  
**To:** Abelin Rodriguez  
Department of Procurement Management  
**From:** Eduardo W. Gonzalez  
Assistant County Attorney  
**Subject:** ITB No. 9186-0/15 (Protective Clothing for Miami-Dade County Firefighters)  
Bidder(s): ADC America, Inc. & Ten-8 Fire Equipment

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You have asked this office if specified portions of the bids submitted by ADC America, Inc. ("ADC America") and Ten-8 Fire Equipment ("Ten-8") are responsive to ITB No. 9186-0/15 (Protective Clothing for Miami-Dade County Firefighters). For the reasons set forth below, we conclude that the portions of ADC America's and Ten-8's bids under question are non-responsive.

## FACTS

We rely on the information provided in your May 1, 2010 memorandum to Hugo Benitez regarding the bidding issues, our meeting on the bidding issues, the terms of the ITB itself and the bids submitted by ADC America and Ten-8. The purpose of the ITB is to establish a contract for the purchase of firefighter protective clothing for Miami-Dade Fire Rescue in conjunction with the County's needs on an as needed when needed basis. The terms of the solicitation required vendors to submit bids on different groups and items of protective clothing. Eight (8) groups (Groups 1 – 8) are awarded on a *group-by-group basis* to the two lowest priced, responsive and responsible vendors. Accordingly, to be considered for award for Groups 1 – 8, the vendor is required to submit prices for all the items in a given group. The solicitation also provides vendors the option to submit a proposed lump sum price bid for turn-out gear inspection, cleaning, repair and tracking.

The two bids in question here involve vendors ADC America and Ten-8. For the Group 7 bid, ADC America only bid on one item. Accordingly, ADC America did not provide prices for all the items in Group 7. The Ten-8 bidding issue involves its bid on the turn-out gear inspection, cleaning, repair and tracking option. Ten-8's bid on the option is "\$60.00" with a qualifying notation that the bid "Depends on repair" and an additional notation: "See Tab 11 for detail." Tab 11 is a "Contract Price List" from, apparently, a subcontractor Ten-8 intends to utilize, setting forth a multitude of different repair task prices on different items.

## DISCUSSION

In general, a bid may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. See Robinson Elec. Co. v. Dade County, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). The determination of whether a variance or irregularity is minor is fact specific and may differ from bid to bid. Florida courts have used a two part test to determine if a specific noncompliance in a bid would constitute a substantial and, thus, nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers. See Glatstien v. City of Miami, 399 So. 2d 1005 (Fla. 3d DCA 1981).

Based on the facts set forth above, ADC America's bid for Group 7 is nonresponsive. ADC America's failure to provide prices on all the items in Group 7 deprives the County of the assurance that the contract will be performed and guaranteed in accordance with the terms of the solicitation. Because the solicitation clearly provided that the awards would be on a group-by-group basis and, accordingly, to be eligible for award for a group, the vendor must submit prices for *all* of the items in a group, ADC America's bid for Group 7 is incomplete and non-responsive.

Ten-8's bid on the option for turn-out gear inspection, cleaning, repair and tracking is non-responsive. Ten-8's "bid" of \$60.00 is not a firm lump sum bid at all. Ten-8 conditions its bid on the option with the note "Depends on repairs." The "repairs" in the tab attached to Ten-8's bids consists of over thirty (30) varieties of repair ranging from \$2.00 to \$90.00. It is also unclear from the bid and the attachment what is and is not included in the \$60.00 "bid." Ten-8's bid on the option deprives the County of the assurance that the option portion of the contract would be entered into, performed and guaranteed according to its specific requirements in the solicitation. Additionally, to waive Ten-8's bid irregularity and permit Ten-8 to explain the pricing ambiguity or provide Ten-8 the right to bid varying repair prices would adversely affect competitive bidding by placing Ten-8 in a position of advantage over other bidders.

  
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cc: Carlos Plasencia

*BASIS FOR SAFETY  
SOLUTIONS, INC.  
NON-RESPONSIVENESS ON  
GROUP 7*

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