

Memorandum



Date: May 6, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

Agenda Item No. 8(F)(9)

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award: Fixed Bus Routes for Miami-Dade Transit

Recommendation

It is recommended that the Board of County Commissioners (Board) approve award of *Contract No. 9791-1/24, Fixed Bus Routes for Miami-Dade Transit* to Safeguard America, Inc. for the purchase of fixed bus route transportation services to Monroe County. The contract includes two routes: (1) Dade-Monroe Express, which runs between Florida City and Marathon; and (2) Card Sound Express, which runs between Florida City and the Ocean Reef Club. For the Dade-Monroe Express route, the awardee shall provide seven air-conditioned, wheel chair accessible, full size buses. For the Card Sound Express route, the awardee shall provide two air-conditioned, wheel chair accessible full size buses. The buses must be available seven days a week, including holidays. Each bus must comply with all safety, mechanical and vehicular requirements mandated by applicable federal, county and State regulations.

In September 2012, staff had advertised Request for Proposals 825 (RFP825) for fixed bus route services. A recommendation to reject all proposals was made by the administration and was approved by the Board on October 1, 2013. The estimated value of the resulting contract would have been \$11,000,000 for five years, as compared to the fiscal impact listed below. The rejection was recommended to achieve lower costs for the County while maintaining the County's standard for quality (including consistency of the route schedules) and passenger safety. Subsequent to the approval of rejection of RFP825, an Invitation to Bid (ITB) was issued. Six proposals were received in response to the ITB. This recommendation is to award the contract to the lowest responsive and responsible bidder.

Scope

The impact of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$10,019,000. If the one, five-year option to renew is exercised, the cumulative contract value will be \$20,038,000. The current contract, *RFP 83*, is for eight years and four months and is valued at \$18,611,000. The average yearly allocation in the replacement contract is lower than the current contract due to better pricing in the replacement contract and elimination of two routes that were included in the current contract. The proposed allocation is budgeted as follows:

Department	Allocation	Funding Source	Contract Manager
Transit	\$ 10,019,000	MDT Operating	Darryl Clodfelter
Total	\$ 10,019,000		

Track Record/Monitor

Tracey Jones of the Internal Services Department is the Procurement Contracting Officer. The contract manager for the user department is listed in the table above.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise, at their discretion, contract modifications and extensions in accordance with the terms and conditions of the contract.

Vendor Recommended for Award

An Invitation to Bid (ITB) was issued under full and open competition on October 18, 2013. The method of award is to the lowest-priced responsive and responsible bidder in the aggregate who meets the solicitation's requirements. Six bids were received in response to the solicitation.

Awardee	Address	Principal
Safeguard America, Inc. d/b/a Americastransportation.com (DBE, SBE, LDB)	3935 NW 26 Street Miami, FL	Steven Masdeu

Vendors Not Recommended for Award

Vendor	Reason for Not Recommending
Escot Bus Lines, Inc.	Prices higher than low bidder
Evergreen Trails, Inc.	
First Class Coach Company, Inc.	
Ill Landships, LLC	
J.G.T. Transportation, Inc. (DBE, MICRO/SBE)	

Due Diligence

Due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine contractor responsibility, including verifying corporate status and that there are no performance or compliance issues. The lists that were referenced include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to contractor responsibility. This information is being provided pursuant to Resolution R-187-12.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies and will be collected on all purchases.
- The Small Business Enterprise Bid Preference and Local Preference were applied in accordance with the respective ordinances.
- The Living Wage Ordinance applies.



Alina T. Hudak
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: May 6, 2014

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

SUBJECT: Agenda Item No. 8(F)(9)

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 Mayor'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(F)(9)
5-6-14

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT
9791-1/24 FOR FIXED BUS ROUTES FOR MIAMI-
DADE TRANSIT IN A TOTAL AMOUNT UP TO
\$20,038,000 FOR PURCHASE OF GOODS AND
SERVICES

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:

Section 1. This Board authorizes award of contract 9791-1/24 Fixed Bus Routes for Miami-Dade Transit as set forth in the incorporated memorandum in a total amount of up to \$20,038,000.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to execute contracts for the items approved herein and exercise contract modifications, options-to-renew, any cancellation provisions, and any other rights contained therein in accordance with the terms and conditions of such contracts.

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:

Rebeca Sosa, Chairwoman
Lynda Bell, Vice Chair

Bruno A. Barreiro
Jose "Pepe" Diaz
Sally A. Heyman
Jean Monestime
Sen. Javier D. Souto
Juan C. Zapata

Esteban Bovo, Jr.
Audrey M. Edmonson
Barbara J. Jordan
Dennis C. Moss
Xavier L. Suarez


The Chairperson thereupon declared the resolution duly passed and adopted this
6th day of May, 2014. 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

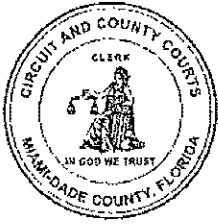
By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Alex S. Bokor

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



April 17, 2014

CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK CENTER
SUITE 17-202
111 N.W. 1st Street
Miami, FL 33128-1983
Telephone: (305) 375-5126

Mr. Erigene Belony, Esq.
The Belony Law Group, Inc.
14 NE 1st Avenue, Suite 802
Miami, FL 33132

Re: Bid Protest – Invitation to Bid (ITB) 9791-1/24, Fixed Bus Routes for Miami-Dade Transit

Dear Mr. Belony,

Pursuant to Section 2-8.4 of the Miami-Dade County Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation of Hearing Examiner filed by the Honorable Judge Loree Schwartz Feiler, in connection with the foregoing bid protest hearing which took place on April 11, 2014.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,

HARVEY RUVIN, Clerk
Circuit and County Courts

By _____
Christopher Agrippa, Director
Clerk of the Board Division

CA/lle

Attachment

cc: Honorable Chairwoman Rebeca Sosa and
Members, Miami-Dade County Board of County Commissioners (via email)
Honorable Carlos A. Gimenez, Mayor, Miami-Dade County (via email)
R.A. Cuevas, County Attorney (via email)

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Mr. Erigene Belony

April 17, 2014

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cc: Hugo Benitez, Assistant County Attorney (via email)
Alexander Bokor, Assistant County Attorney (via email)
Jenelle Snyder, County Attorney's Office (via email)
Rita Gonzalez, County Attorney's Office (via email)
Silvia Armenteros, County Attorney's Office (via email)
Charles Anderson, Commission Auditor (via email)
Elizabeth Owens, BCC Legislative Analyst, Commission Auditor's Office (via email)
Lester Sola, Director, Internal Services Department (via email)
Miriam Singer, Assistant Director, Procurement Management, ISD (via email)
Amos Roundtree, Director, Purchase Division, ISD (via email)
Walter Fogarty, Manager, Procurement Vendor Services, ISD (via email)
Tracey Jones, Procurement Contract Officer I, Procurement Management, ISD (via email)
JGT Transportation (via email)
Safeguard d/b/a Americas Transportation Company (via email)
Escot Bus Lines (via email)
First Class Coach d/b/a Martz Group (via email)
Evergreen Trails d/b/a/ Horizon Coach Lines (via email)
III Landships (via email)
Metro Dade Court Reporters (via email)

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

In re: Bid Protest—Invitation To Bid No. 9791-1/24
Fixed Bus Routes for Miami-Dade Transit (“MDT”)
Protest of JGT Transportation, Inc.

FINDINGS AND RECOMMENDATIONS OF HEARING EXAMINER
Pursuant to Section 2-8.4 Miami-Dade County Code and Administrative Order 3-21

This matter was heard before the undersigned Hearing Examiner on April 11, 2014 at 9:30 A.M. in the Stephen P. Clark Center, 111 N.W. 1st Street, Room 27B, Miami, Florida, upon the bid protest filed by JGT Transportation, Inc. (“JGT” or “Petitioner”) of the Miami-Dade County (“County”) Mayor’s recommendation of award to Safeguard America, Inc. d/b/a America’s Transportation (“Safeguard”) in response to Invitation to Bid No. 9791-1/24, Fixed Bus Routes for MDT (the “ITB”). Safeguard is an intervenor in this bid protest.

Having considered the written protest, the County’s memorandum in opposition to the bid protests, the exhibits, arguments by the parties, testimony of the witness, and all documentation introduced at the bid protest hearing, and being otherwise fully advised, I find that the County award recommendation was not arbitrary or capricious, but rather based upon a reasonable judgment and an honest exercise of discretion. Petitioner failed to offer any evidence that the County’s recommendation was anything other than the rational and reasoned result of a process conducted in accord with relevant laws, regulations, and the bid documents. Accordingly, I recommend denying the bid protest and affirming the County Mayor’s recommendation to award Safeguard the contract for Fixed Bus Routes for MDT.

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FINDINGS OF FACT

1. The purpose of the ITB is to solicit bids in order “to establish a contract for [MDT] for purchase of fixed bus transportation services. The contract will provide patrons transportation services throughout Miami-Dade and Monroe Counties via two routes.” ITB at ¶¶ 2.1. The ITB set forth a procedure which stated, in pertinent part:

2.4 METHOD OF AWARD: TO A SINGLE LOWEST PRICE VENDOR IN THE AGGREGATE

Award of this contract will be made to the responsive, responsible bidder who meets the requirements listed in Section 2.4.1 and whose offer represents the lowest price when the extended pricing (Extended Pricing = Price Per Hour x Total Number of Service Hours) for both items is added in the aggregate. If a bidder fails to submit an offer on all items, its overall offer may be rejected. The County will award the total contract to a single bidder

[...]

2.4.1 Requirements

[...]

D. Bidder shall be regularly engaged in the business of providing transportation services for fixed/semi fixed routes. Two (2) references shall be listed in the Bidder's submittal. The references listed must be customers that are currently receiving or have received services from the Bidder in the past five (5) years. The references must include the customer's company name, and the name, title, address, e-mail, and telephone number of the contact person who can verify that the Bidder has successfully provided the services. These references shall ascertain to the County's satisfaction that the Bidder has sufficient experience and expertise in the industry.

Id. at ¶¶ 2.4, 2.4.1 (D) (emphasis added).

2. The record demonstrates that the County procurement officer, Ms. Tracey Jones, proceeded exactly according to this directive. Specifically, the evidence demonstrated that Ms. Jones aggregated the pricing, found Safeguard to be the lowest price, and called references for more references than required by the ITB for fixed or semi-fixed route customers of Safeguard.

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3. Ms. Jones's testimony as well as the record evidence shows that Safeguard provided multiple references for which Ms. Jones conducted due diligence. Ms. Jones's testimony was the only testimony offered. Safeguard did not offer any contradictory testimony or record evidence. Ms. Jones testified that she conducted due diligence—and the results of that due diligence-- were not contradicted by any evidence on the record or presented at the hearing.

4. The undersigned finds that Ms. Jones conducted due diligence on 5 references offered by Safeguard, 4 of which met the qualification for fixed or semi-fixed route service. Further, the record and testimony demonstrate without any contradiction or question that the companies referenced gave positive evaluations of Safeguard's performance. Based on that, the Mayor recommended Safeguard for contract award. Subsequent to this award recommendation, the subject Bid Protest was timely filed.

5. Petitioner offered no evidence to contradict the competent testimony and record evidence that Safeguard was the lowest priced, responsive, responsible bidder consistent with the evaluation of price as well as the requirements as outlined in the ITB including reference checks. See Mayor's recommendation of award to Safeguard with cover memorandum dated March 21, 2014 (the "Award Recommendation").¹

6. There is no evidence to contradict (or even to question) the accuracy or validity of the testimony and evidence offered by Ms. Jones and the County. The only evidence submitted or testimony given was that 4 of the 5 references examined for Safeguard were for semi-fixed or fixed route service consistent with the requirements of the ITB. Specifically, the services

¹ Six bids were received in response to this ITB. The evidence unequivocally establishes that Safeguard was the lowest-priced, responsive, responsible bidder and Petitioner was the second lowest-priced bidder.

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Safeguard provided for Royal Caribbean, the Port of Miami, the Miami Marlins, and the Seminole Hard Rock Casino were all fixed or semi-fixed route service and all were properly reviewed and considered by the County in determining Safeguard's responsiveness.²

CONCLUSIONS OF LAW

7. The Petitioner fails to meet the heavy burden that Florida law imposes to overturn a contract award recommendation, especially here where sufficient due diligence was conducted and the recommended firm, Safeguard, met all the bid requirements and offered the lowest price. The evidence shows that the County acted in good faith and had a rational basis for the award recommendation.

Legal Standard

8. Neither hearing examiners nor judges may overturn or second guess the judgment of government employees or elected officials as to the merits or wisdom of a procurement decision. *See Miami-Dade County v. Church and Tower, Inc.*, 715 So. 2d 1084, 1089 (Fla. 3d DCA 1998) ("So long as such a public agency acts in good faith, even though they may reach a conclusion on facts upon which reasonable men may differ, the courts will not generally interfere with their judgment, even though the decision reached may appear to some persons to be erroneous.").

² Petitioner argued, without offering any testimony or evidence of any kind, that Royal Caribbean was charter service and therefore should not have "counted" toward Safeguard's requirement to provide references of fixed or semi-fixed route service. This is unpersuasive and in any event irrelevant. The only competent evidence establishes that the County conducted sufficient due diligence and established the Royal Caribbean route as a fixed or semi-fixed route. Nonetheless, even without considering Royal Caribbean, Safeguard provided at least 3 other fixed or semi-fixed route references when only 2 were required. Due diligence indicated all met the requirements, so Petitioner's argument fails as a matter of fact and law regardless of consideration of Royal Caribbean.

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9. To the contrary, a recommendation may only be overturned if arbitrary, capricious, or the product of dishonesty, fraud, illegality, oppression, or misconduct. *See Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). Accordingly, the core tenet of bid protest hearings provides that "the hearing officer's sole responsibility [in reviewing a protest] is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." *Dep't of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 914 (Fla. 1988). The County's action may be considered arbitrary if it is not supported by facts or logic. *See Agrico Chemical Co. v. Dep't of Environmental Regulation*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). The County's action may be considered capricious if it is taken without thought or reason or with irrationality. *Id.*; *see also Church & Tower, Inc.*, 715 So. 2d at 1089-90 (finding that while bid protest showed substantial disagreement with the action of the commission and the hearing examiner, it fell short of showing "arbitrary or capricious action"); *Marriott Corp. v. Metro Dade County*, 383 So. 2d 662 (Fla. 3d DCA 1980) (holding that County procurement decision need only be reasonably based on facts tending to support the County's conclusion).

10. The facts demonstrate more than a rational basis for the decision to recommend award to Safeguard. Contrary to Petitioner's arguments, in response to this ITB, based on the evidence, it would arguably be error if the County were to make a recommendation to award to any company other than Safeguard, the lowest-priced, responsive, responsible bidder. *See System Develop. Corp. v. Dep't of Health & Rehabilitative Servs.*, 423 So. 2d 433, 444 (Fla. 1st DCA 1982) (contrasting "rigid" bid process with more fluid RFP process); *see also* Miami-Dade County Administrative Order 3-38.

11. The record makes clear the bases relied upon by the procurement officer and the Mayor or Mayor's designee to recommend Safeguard. This is a straightforward low-price bid

award which required the successful bidder to meet certain benchmarks that the County would verify through due diligence in order to be deemed responsible. There is absolutely no evidence presented by Petitioner that suggests that the County in any way acted arbitrarily, irrationally, or illegally in recommending award to Safeguard.³ Based on the record, the County relied on Safeguard's low price bid and its own due diligence which confirmed Safeguard to be in compliance with all bid requirements. The recommendation should not be disturbed.

CONCLUSION

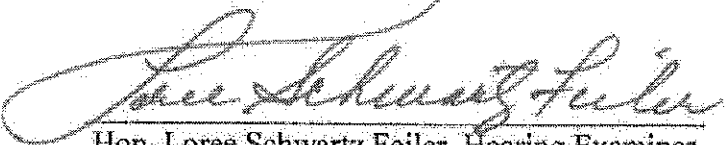
The Petitioner has failed to establish any illegal conduct, or arbitrary or capricious decisions, on the part of the County. My function is not to second guess the County's lawful and

³ There is no basis to conclude anything other than 4 out of 5 of the references Safeguard provided meet the requirement for fixed or semi-fixed route service. To the extent petitioner attempted to argue otherwise in its bid protest, that argument must fail. First and foremost, the definition contradicts the testimony offered, the evidence presented, and the clear meaning of the terms. Additionally, it must fail because to accept Petitioner's incorrect definition would render it without standing to protest. The record shows that of the references submitted by Petitioner, only 3 fall within the requisite 5 year time period. Of those references, 2 appear to be fixed or semi-fixed route service according to the widely accepted definition reasonably relied upon by the County: Card Sound Road Fixed Route Service for MDT and shuttle service for Port of Miami/ Miami-Dade Parks, Recreation and Open Spaces. The third reference is for "group travel services" for the County which clearly is prohibited by the definition offered in Addendum 1 to the ITB. The fourth reference is for services offered outside the requisite time period.

Therefore, to the extent that Petitioner proffers an argument involving an incorrect reading of the definition of fixed and semi-fixed, under its own definition one of the two of its otherwise acceptable references (the Port Miami/Parks Department shuttle) would have to be thrown out, rendering its proposal non-responsive for failure to provide at least two references for fixed or semi-fixed service. *Intercontinental Props., Inc. v. Dep't of Health & Rehab. Servs.*, 606 So.2d 380, 384 (Fla. 3d DCA 1992) ("At the least, a party protesting an award to the low bidder must be prepared to show not only that the low bid was deficient, but must also show that the protestor's own bid does not suffer from the same deficiency. To rule otherwise is to require the State to spend more money for a higher bid which suffers from the same deficiency as the lower bid.") (emphasis added). Accordingly, even if Petitioner's erroneous interpretation of the definition of fixed route were accepted, it would result in its own bid rendered deficient and therefore render it without standing to protest.

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rational process, although in this case with the lack of evidence to the contrary there would be no way to come to any other conclusion other than the one reached by the County. The record demonstrates that the County Mayor most certainly had a rational basis to recommend Safeguard for this contract award. Accordingly, I concur with the County Mayor's recommended contract award to Safeguard in response to Invitation to Bid No. 9791-1/24, Fixed Bus Routes for MDT and further recommend a denial of JGT's bid protest.


Hon. Loree Schwartz Feiler, Hearing Examiner