

Memorandum



Date: January 22, 2020

Agenda Item No. 8(F)(3)

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award a Designated Purchase Contract: Bulk Industrial Crude Solar Salt

Recommendation

It is recommended that the Board of County Commissioners (Board) approve this request for award of a Designated Purchase Contract No. FB-01285, Bulk Industrial Crude Solar Salt, to Morton Salt, Inc. (Morton) for the Miami-Dade Water and Sewer Department. Approval of a designated purchase is being requested, pursuant to Section 2-8.1(b)(3) of the Miami-Dade County Code. This contract will provide industrial grade crude solar salt for onsite generation of sodium hypochlorite (bleach) to disinfect sewage in the County's wastewater treatment plants. The current contract, FB-00083, Bulk Industrial Crude Solar Salt, was approved by the Board on September 16, 2014 through Resolution No. R-805-14 for a five-year term.

An Invitation to Bid was issued under full and open competition on July 3, 2019. One vendor, the incumbent, responded to the solicitation. A total of 1,985 vendors were notified upon advertisement. Prior to release of the solicitation, market research was conducted to find potential vendors that are able to provide solar salt to the County. The sole bid received from Morton was deemed non-responsive by the County Attorney's Office due to Morton taking exceptions to the bid. Because Morton is the only bidder on this solicitation, the County is free to make the purchase via a non-competitive bid waiver or designated purchase as allowed under the County Code. A follow up survey was sent to nine vendors which viewed the solicitation, but no responses were received. Similarly, when the current contract was advertised, the County only received one bid.

Award of this contract is recommended as the exceptions taken by the bidder have been resolved satisfactorily without impacting the operations. The pricing provided by Morton was \$0.005 cents more per pound compared to the pricing currently being paid by the County. The County negotiated the exceptions taken by Morton and agreed to the change in delivery time from two to five days, which is a minor deviation that will not affect Water and Sewer's operations. Morton also stated with their bid submittal that prices would only be good until June 30, 2020 and pricing would have to be re-negotiated on a yearly basis. Negotiations resulted in pricing being held firm for a full year from the execution of the contract and price increases being capped at no more than three percent. The recommended vendor has satisfied all other requirements. The bid price is fair as compared to the pricing from Palm Beach County, Lee County and Hillsborough County. Therefore, it is in the County's best interest to approve this designated purchase pursuant to Section 2-8.1(b)(3) of the County Code to continue purchasing industrial crude solar salt.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$3,770,000. The current contract, FB-00083, is valued at \$4,275,000 for a five-year and five-month term and expires on March 5, 2020. The allocation under the replacement contract is lower than the current contract due to lower estimated quantities of solar salt being purchased.

Department	Allocation	Funding Source	Contract Manager
Water and Sewer	\$3,770,000	Proprietary Funds	Susan Pascul
Total:	\$3,770,000		

Track Record/Monitor

Jessica Tyrrell of the Internal Services Department is the Procurement Contracting Manager.

Delegated Authority

If this item is approved, the County Mayor or County Mayor’s designee will have the authority to exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

An Invitation to Bid was issued under full and open competition on July 3, 2019. One vendor, the incumbent, responded to the solicitation.

Pursuant to notification requirements in Resolution No. R-477-18, the bidder recommended for award is a non-local vendor. Only one vendor responded to the solicitation. Market research revealed there are a limited number of vendors which will deliver solar salt to the Southeast region.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Morton Salt, Inc.	444 West Lake Street Suite 3000 Chicago, IL	None	0	John Zurales
			0%	

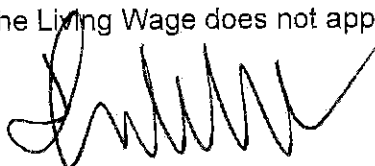
*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor’s employees who reside in Miami-Dade County as compared to the vendor’s total workforce.

Due Diligence

Pursuant to Resolution No. R-187-12, 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 included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to contractor responsibility.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies where permitted by the funding source.
- The Small Business Enterprise measures and Local Preference were considered but did not impact the award.
- The Living Wage does not apply.



Jack Osterholt
 Deputy Mayor

Memorandum



Date: September 6, 2019

To: Robert Mendoza
Procurement Contracting Officer
Internal Services Department, Strategic Procurement Division

From: Eduardo W. Gonzalez
Assistant County Attorney

Subject: Request for Responsiveness Opinion
Bulk Industrial Crude Solar Salt

You have asked this office if the bid submitted by Morton Salt, Inc. ("Morton") in response to Solicitation FB-01285 Bulk Industrial Crude Solar Salt is responsive. Morton was the sole vendor who submitted a bid in response to the solicitation. We rely on the information provided in your July 29, 2019 memorandum to Hugo Benitez, the terms of the solicitation itself and the bid submitted by Morton. For the reasons set forth below, Morton's bid is nonresponsive.

Background

The purpose of the solicitation was "to establish a contract for the purchase and delivery of bulk industrial crude solar salt for Miami-Dade County, on an as-needed basis." Section 2.1. The solicitation required fixed pricing "for a period of no less than 12 months from the contract's initial effective date." Section 2.6.1. Thereafter, the pricing may be adjusted on a yearly basis based on the Producer Price Index (PPI), Chemicals and Allied Products-Salt, Evaporated and Solar, Series ID: WPU6790904. Additionally, the solicitation required delivery within two (2) calendar days after the date of the order. See Section 2.9.

In its bid, Morton provided that it only guaranteed firm pricing from November 1, 2019 to June 30, 2020. After June 30, 2020 Morton provided that "pricing will have to be re-negotiated every year by the Morton pricing team." Morton also declared that delivery for bulk salt is "five business days."

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).

The method of award in this solicitation is to the lowest priced responsive and responsible bid. As the County contemplated contract award here is to the bidder offering the lowest price, price is the material element of the solicitation. Therefore, Morton's failure to comply with the solicitation's pricing requirement of submitting a fixed guaranteed price for a period of no less than 12 months is a material

deviation. Additionally, Morton's variance from the delivery terms of the solicitation "for the purchase and *delivery* of bulk industrial crude solar salt" is also a material deviation. Morton's variances on the material elements of pricing and delivery: (1) are not permitted by the terms of the solicitation; (2) deprive the County of the assurance that the contract would be entered into and performed pursuant to the solicitation's requirements; and (3) confer an unfair competitive advantage to Morton if allowed. Accordingly, Morton's bid is nonresponsive.

Because Morton is the only bidder on this solicitation, the County may re-solicit the contract for the purchase and delivery of bulk industrial crude solar salt. Alternatively, the County is free to make the purchase via a non-competitive bid waiver or designated purchase as allowed under the County Code.

/s/ Eduardo W. Gonzalez





MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: January 22, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(3)

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
- Statement of social equity 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 present , 2/3 membership , 3/5's , unanimous , CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) , CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) , or CDMP 9 vote requirement per 2-116.1(4)(c)(2) 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)(3)
1-22-20

RESOLUTION NO. _____

RESOLUTION AUTHORIZING DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING AWARD OF CONTRACT NO. FB-01285 FOR THE PURCHASE OF BULK INDUSTRIAL CRUDE SOLAR SALT IN AN AMOUNT NOT TO EXCEED \$3,770,000.00 FOR A FIVE YEAR TERM FOR THE MIAMI-DADE WATER AND SEWER DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

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 finds it is in the best interest of Miami-Dade County to approve a designated purchase of Contract No. FB-01285 for the purchase of bulk industrial crude solar salt in an amount not to exceed \$3,770,000.00 for a five-year term for the Miami-Dade Water And Sewer Department , pursuant to Section 2-8.1(b)(3) of the County Code, by a two-thirds vote of the Board Members present. Copies of the contract documents are on file with and available upon request from the Internal Services Department, Strategic Procurement Division.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to exercise all provisions of the contract pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

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:

Audrey M. Edmonson, Chairwoman	
Rebeca Sosa, Vice Chairwoman	
Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose "Pepe" Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	


The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the 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.



Eduardo W. Gonzalez