

Memorandum

MIAMI-DADE
COUNTY

Date: February 4, 2020

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

Agenda Item No. 8(F)(2)

From: Carlos A. Gimenez
Mayor

Subject: Recommendation to Approve the Award of Bakery Products

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. FB-01363, Bakery Products*, for the Miami-Dade Corrections and Rehabilitation and Community Action and Human Services departments. The County currently utilizes *Contract No. 8929-1/19-1*, which was approved by the Board on July 2, 2009 for five years, with one, five-year option to renew term, through Resolution No. R-920-09. The contract provides for the purchase of bakery products, including loaves of bread, buns, rolls and hoagies, on an as needed basis.

The Corrections and Rehabilitation department needs bakery products to serve approximately 4,000 inmates per day at its three correctional facilities. Additionally, the Community Action and Human Services department must provide a variety of basic food groups to participants in a variety of its programs in order to comply with federal mandates, which include the residents at the Safe Space Shelter and Helen Sawyer Adult Living Facility. The replacement contract includes the following groups: Group I – Non-Federally Funded (bread loaves, buns and rolls); Group II – Federally Funded (bread loaves, buns and rolls); and Group III – Federally Funded (French bread loaf).

Two bids were received in response to the solicitation for Groups I and II. No bids were received for Group III. The recommended vendor for Groups I and II has a local address. The County will conduct market research to determine the best method of procurement for Group III. Upon advertisement, 38 vendors viewed the solicitation, including the incumbent vendor. Prior to advertisement, outreach efforts included posting a draft solicitation for industry comments and contacting local bakeries registered with a local business tax receipt.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$1,853,966. The current contract, *8929-1/19-1*, is valued at \$10,501,236, for a ten-year and six-month term and expires on February 29, 2020. The allocation under the replacement contract is lower than the current contract due to lower quantities of bakery products ordered on an annual basis since the inception of the current contract.

Department	Allocation	Funding Source	Contract Manager
Corrections and Rehabilitation	\$1,833,003	General Fund	Jill Paiewonsky
Community Action and Human Services	\$20,963	General and Federal Funds	Richard Signori
Total:	\$1,853,966		

Track Record/Monitor

Basia M. Pruna of the Internal Services Department is the Assistant Division Director of the Strategic Procurement Division.

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. Two bids were received in response to the solicitation. The lowest bidder is being recommended in accordance with the method of award per the solicitation and is a local firm.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal	Groups
			1) Miami-Dade 2) Percentage*		
Flowers Baking Co. of Miami, LLC	1919 Flowers Circle Thomasville, GA	1700 NW Miami Court Miami, FL	116	Willie Prince	I and II
			63.73%		

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

Vendor Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
Bimbo Bakeries USA, Inc.	11801 NW 100 Street Medley, FL	Deemed non-responsive by County Attorney's Office for taking exception to the delivery requirements of the Solicitation (opinion attached)

Due Diligence

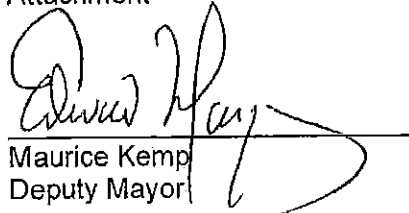
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and drafting sessions with the user department.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies where permitted by the funding source.
- The Small Business Enterprise Bid Preference and Local Preference were applied where permitted by the funding source.
- The Living Wage does not apply.

Attachment


 Maurice Kemp
 Deputy Mayor

Memorandum

MIAMI DADE
COUNTY

Date: October 8, 2019

To: Basia M. Pruna
Assistant Division Director
Strategic Procurement Division
Internal Services Department

From: Angela Benjamin
Assistant County Attorney

Subject: Response to Request for Legal Review for Responsiveness, FB-01363 Bakery Products (the "Solicitation")

You have asked this office if a bid received in response by Bimbo Bakeries USA, Inc. ("Bimbo") to the Solicitation is responsive. We rely on the information provided in your October 1, 2019 memorandum, the terms of the Solicitation, and Bimbo's proposal submitted in response to the Solicitation. To the extent any of the information provided changes, the conclusions in this opinion may also change. You have informed me that the estimated value of the contract exceeds \$1 million. As such, I am providing a formal responsiveness opinion. For the reasons set forth below, we conclude that Bimbo's bid is non-responsive.

FACTS

The Solicitation is seeking to establish a contract for the purchase of bakery products for the County on an as-needed basis. With respect to deliveries of the bakery products, § 2.5 of the Solicitation provides as follows:

All deliveries shall be made in accordance with the details provided in each purchase order. The County will provide a minimum of 48 hour notice for all regular orders and a minimum of 24 hour notice for any adjustments to regular orders. The Awarded Bidder(s) will be provided a 24 hour notice for any emergency deliveries. Deliveries shall be made on the date specified on each purchase order no matter the quantity requested. Awarded Bidder(s) shall not hold product or charge the County for express/rush delivery. All deliveries shall be made in accordance with good commercial practices and *all required delivery times shall be adhered to by the Awarded Bidder(s)*; except in cases where the delivery will be delayed due to acts of nature, strikes, or other causes beyond the control of the Awarded Bidder(s). In cases of delays, the Awarded Bidder(s) shall notify the County of the delays in advance of the original delivery date so that a revised delivery schedule can be appropriately considered by the County.


In response to the Solicitation, Bimbo submitted its Bid, identifying the unit price for each of the bakery products. At the bottom of its Bid Response Form, and again typed in above § 2.5 of the Solicitation, Bimbo stated that it "needs a minimum of 72 hours notice on orders for white bread and wheat bread with a 48 hour minimum notice on adjustments. All other items need a 6 days notice on orders." See Bimbo Bid at p. 62-63.

DISCUSSION

The purpose of the competitive bidding process is to, among other things, "secure fair competition upon equal terms to all bidders . . . and to afford an equal advantage to all desiring to do business with the county, by affording an opportunity for an exact comparison of bids." *Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977). A bid that contains a material non-conformity from the Solicitation must be rejected as non-responsive. See *ViON Corp. v. United States*, 122 Fed. Cl. 559, 575 (Fed. Cl. 2015) ("where a proposal fails to conform to a material term of the solicitation, the proposal is unacceptable and may not be the basis of an award. '[A]n agency's determination that a proposal is acceptable may be deemed arbitrary and capricious if the proposal did not provide what was called for in the solicitation.'") (internal citations omitted). A minor variance, however, will not invalidate a bid. *Robinson Elec. Co. v. Dade Cnty.*, 417 So. 2d 1032, 1034 (Fl 3d DCA 1982). Bidders who propose impermissible exceptions to invitations to bid do so at the risk of those exceptions being deemed material to the proposal and having their bids rejected as non-responsive.

A change in delivery terms in a solicitation is a material one. *Matter of: Sierra/Miso, Inc.*, B-216147, 84-2CPD P 320, 1984 WL 46645, at *1 (Comp. Gen. 1984) ("Sierra's bid was properly rejected as nonresponsive because Sierra's exception to the delivery requirement is a material one affecting the substance of the bid."); *Irvin Indus. Canada, Ltd. v. U.S. Air Force*, 924 F. 2d 1068, 1074 (D.C. Cir. 1990) ("decisions have scrupulously observed the principle that a bid failing to meet delivery deadlines announced in the solicitation is non-responsive and must be rejected.").

The County placed the delivery terms into the solicitation presumably in anticipation of how quickly it will need the baked goods once ordered. This delivery term is a material term of the solicitation. See *Sierra/Miso, Inc.*, 1984 WL 46645, at *1. In addition, to the extent other bidders have not taken exception to such delivery terms, those bidders have accounted for the quicker turnaround time for orders in their pricing scheme. As such, if Bimbo's bid were accepted as responsive, those other bidders would be at a competitive disadvantage when compared to Bimbo. This material exception to the delivery requirements of the Solicitation along with the competitive advantage that Bimbo gains from taking the exception render Bimbo's bid non-responsive.


Angela Benjamin



MEMORANDUM
(Revised)

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

DATE: February 4, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(2)

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

Agenda Item No. 8(F)(2)

Veto _____

2-4-20

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. FB-01363 FOR GROUPS NO. 1 AND 2 FOR THE PURCHASE OF BAKERY PRODUCTS FOR MULTIPLE DEPARTMENTS FOR A FIVE-YEAR TERM IN AN AMOUNT NOT TO EXCEED \$1,853,966.00; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD, ISSUE THE APPROPRIATE PURCHASE ORDERS TO GIVE EFFECT TO SAME AND EXERCISE ALL PROVISIONS OF THE CONTRACT PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA 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 this Board approves award of Contract No. FB-01363 for Groups No. 1 and 2 for a five-year term in an amount not to exceed \$1,853,966.00, and authorizes the County Mayor or County Mayor's designee to give notice of this award, issue the appropriate purchase orders to give effect to same and exercise all provisions of the contract pursuant to Section 2-8.1 of the Code of Miami-Dade County, Florida and Implementing Order 3-38. A copy of the contract document is on file with and available upon request from the Internal Services Department, Strategic Procurement Division.



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 this resolution duly passed and adopted this 4th day of February, 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.



Oren Rosenthal