

# Memorandum



**Date:** August 31, 2020

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

**From:** Carlos A. Gimenez  
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", written over the name in the "From" field.

**Subject:** Supplemental Information - Recommendation for Approval to Award of a Non-exclusive Management Agreement for Operation of Public Parking Facilities at Miami International Airport

Supplement to  
Substitute  
Agenda Item No. 8(F)(9)

This supplement provides additional information regarding the subject recommendation. On February 5, 2020, the award recommendation resulting from the Best and Final Offer (BAFO) solicitation was filed with the Clerk of the Board, and notice was sent to the two participating vendors, LAZ Florida Parking, LLC (LAZ) and Airport Parking Associates, a Joint Venture between SP Plus Corporation and WRP & Associates, LLC (APA).

On February 10, 2020, a bid protest was filed by APA alleging that the County committed three fatal errors in recommending award to LAZ: 1) erroneously awarding points based upon Airport Concession Disadvantaged Business Enterprise (ACDBE) participation, 2) modifying aspects of the RFP related to employee benefit reimbursements, and 3) allowing LAZ to benefit from known misrepresentations.

The protest was heard by a Hearing Examiner on June 30, 2020. On July 10, 2020, the findings and recommendations of the Hearing Examiner confirmed and upheld the County's recommendation to award to LAZ (See Attached). The Hearing Examiner findings state that, "None of these challenges impact the County's decision nor the process, which would give rise to a level high enough to overturn the recommended award to LAZ." Further, the findings indicated that the County had no obligation to accommodate APA's economic limitations regarding existing union agreements, and stated, "In fact, doing so would subvert the very purpose of competitive procurement," and that conducting the BAFO "did, in fact, place both parties on a "level playing field" and gave them equal opportunity."

In the Hearing Examiner's conclusion, it was determined that the "the County did not act in an arbitrary or capricious manner in awarding the contract to LAZ," and recommended that "the contract be upheld and that the protest, therefore, be denied."

Therefore, it is recommended that the Board approve the award to LAZ Florida Parking LLC as outlined in the accompanying recommendation.

A handwritten signature in blue ink, appearing to read "Jack Osterholt", written over the name in the signature line.

Jack Osterholt  
Deputy Mayor

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



**CLERK OF THE BOARD OF COUNTY COMMISSIONERS**

STEPHEN P. CLARK CENTER

SUITE 17-202

111 N.W. 1<sup>st</sup> Street

Miami, FL 33128-1983

Telephone: (305) 375-5126

July 10, 2020

Mr. Michael Llorente  
LLORENTE & HECKLER, PA.  
807 Arthur Godfrey Road  
Miami Beach, Florida 33140

Re: Contract No. RFP-00808– Non-exclusive Management Agreement for Operation of Public  
Parking Facilities at Miami International Airport

Dear Mr. Llorente:

Forwarded for your information is a copy of the Findings and Recommendation filed by Judge  
Eugene J. Fierro, Hearing Examiner, in connection with the bid protest hearings, held on  
Tuesday, June 30, 2020.

Should you have any questions regarding this matter, please do not hesitate to contact Daysha  
McBride at 305-375-1293.

Sincerely,

HARVEY RUVIN, Clerk  
Circuit and County Courts

By 

Melissa Adames, Acting Director  
Clerk of the Board Division

MA:dmcb

Honorable Chairwoman Audrey M. Edmonson and Members, Board of County Commissioners  
(via email)

Honorable Carlos A. Gimenez, Mayor, Miami-Dade County (via email)

Lester Sola, Aviation Director & Chief Executive Officer (via email)

Mr. Michael Llorente  
LLORENTE & HECKLER, PA.  
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Abigail Price-Williams, County Attorney (via email)  
Geri Bonzon-Keenan, First Assistant County Attorney (via email)  
Hugo Benitez, Assistant County Attorney (via email)  
Dave Murray, Assistant County Attorney (via email)  
Jenelle Snyder, County Attorney's Office (via email)  
Elizabeth Alfonso Ruiz, County Attorney's Office (via email)  
Rosa Martin, County Attorney's Office (via email)  
Adeyinka Majekodunmi, Commissioner Auditor (via email)  
Tara Smith, Director, Internal Services Department (via email)  
Namita Uppal, Chief Procurement Officer, Internal Services Department (via email)  
(via email)  
Beth Goldsmith, Chief Negotiator, Internal Services Department (via email)  
Jeanise Cummings-Labossiere, Vendor Services Manager, Internal Services Department  
(via email)  
Rene Guerrero, Procurement Vendor Service Specialist, Internal Services Department  
(via email)  
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CLERK, CIRCUIT & COUNTY CLERK  
MIAMI-DADE COUNTY, FLA.  
#1

MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS

AIRPORT PARKING ASSOCIATES

Petitioner,

RFP NO.: 00808 OPERATION OF  
PUBLIC PARKING FACILITIES AT  
MIAMI INTERNATIONAL AIRPORT

vs.

MIAMI-DADE COUNTY,

Respondent.

**REPORT AND RECOMMENDATION**

A hearing on this matter was conducted on June 30, 2020, before the undersigned Senior Judge and Hearing Officer Eugene J. Fierro, utilizing the Zoom remote audio-visual technology platform.

This matter concerns a Bid Protest filed by Airport Parking Associates (APA), a Joint Venture between SP Plus Corporation and WRD and Associates, Inc. (WRD). The recommended award made to LAZ Florida Parking LLC (LAZ) of its Contract No. RFP 00808, Non-Exclusive Agreement for the Operation of Public Parking Facilities at Miami International Airport (MIA), for the Miami-Dade Aviation Department (MDAD). This contract will replace an existing contract for such services which provides for day-to-day operations and staffing of parking facilities at MIA, as well as supervision of third-party vendors providing custodial and grounds maintenance services.

Two proposals were received in response to the solicitation; to wit, LAZ and APA. As part of the process, both of them were vetted by the Competitive Selection Committee (CSC), which also conducted negotiations with both of them. CSC's recommendation was based upon what is being deemed to be the highest ranked proposal offering the most favorable pricing. As a result of the CSC's negotiation process, LAZ was selected over APA, after finding both

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proposers were deemed, based on scoring, to be technically qualified, and after recommending that there be "dual negotiations" with both proposers. APA does have standing to challenge the recommended award because it was a responsive and responsible bidder. As a result of a conference call hearing with all parties, the recommended award selectee, LAZ, was granted its request to Intervene in this protest process and hearing today. APA alleges that it was materially prejudiced as a result of the County's "arbitrary and capricious acts" and that the protest process had both a fatally defective proposal and fatally defective evaluation process.

DISCUSSION

The Protestor, APA, alleges that during the procurement process, the County committed three fatal errors which requires rescission of the recommended award to LAZ.

First, the County awarded the recommended proposer 264 ½ evaluation points for its participation and program for disadvantaged businesses, even though the proposer failed to comply with the mandatory Request for Proposal (RFP) requirements for participation in that program.

Second, the County modified a material RFP specification relating to employee benefits after the bid submittal deadline and after the publication of the initial award recommendation. Citing a report by the Inspector General of Miami-Dade County, which determined that the specification relating to employee and benefits, "was an unvetted specifications that never should have been incorporated into the advertised RFP."

Third, the County allowed their recommended proposer to benefit from known misrepresentations regarding its own experience and the experience of its Joint Venture Partner/Prime Subcontractor, thus allowing the recommended bidder to achieve an artificially inflated evaluation scoring. It should be noted that the RFP encourage proposers to partner with

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Airport Concession Disadvantaged Business Enterprises, (ACDBE), and award additional points to proposers based on the percentage of ownership and/or participation of ACDBE firms. The RFP has mandatory provisions requiring proposers to provide certain documents, including drafts, concession agreements, to be eligible for ACDBE bonus points. The ACDBE plan accounts for 100 of the 1,000-point criteria utilized by the Committee in evaluating and making its recommendation. The remaining points are weighed in five additional categories, or criteria – as follows:

Evaluation Criteria

<u>Technical Criteria</u>	<u>Points</u>
1. Proposer's relevant experience, qualifications, capabilities and past Performance	125
2. Relevant experience and qualifications of key personnel, including key Personnel of subcontractors, that will be assigned to this project, and Experience and qualifications of subcontractors	175
3. Proposer's approach to providing the services requested in this Solicitation	250
4. Proposer's Financial Stability	200
5. ACDBE Plan	100
<u>Price Criteria</u>	
6. Proposer's Proposed Management Fee	200

LABOR PEACE REQUIREMENTS

The RFP was silent on Labor Peace Requirements. It was clear, though, that MDAD intended to include the Labor Peace Requirement in accordance with the Board of County Commissioners Resolution No. R-148-07, which requires, in part, that "All requests for qualifications and bids for food/beverage, retail/news/gifts and hotel at Miami International shall require the proposer to sign a Labor Peace Agreement. The Proposer must also provide copies of

any Labor Agreements it has with labor organizations that represent the proposers' employees. APA contends that MDAD failed to include in the RFP any reference to Labor Peace and also failed to inform proposers that a signed Labor Peace Agreement would be required as a condition of award.

Currently APA is the incumbent parking manager at MIA and has been so for approximately 20 years, according to the testimony of its witness, Jack Ricchiuto. And as such they argue, that it was aware of the Labor Peace Requirement of R-14807, and also argues that benefits currently afforded to APA's employees, pursuant to an existing Labor Peace Agreement, far exceed the reimbursable benefits outlined in the RFP. It argues that that, in and of itself, created a problem for APA because it would be required to pay for un-reimbursable employee benefits mandated under its LPA. APA says its employee benefits are more generous than the reimbursable benefits set forth in the RFP. They asked the County to consider increasing the number of reimbursable paid holidays and paid vacations; 401K contributions to its employees, which the County declined to do. The County did, however, invite APA to take exception to the RFP reimbursement requirements, which they did. APA argues it conformed, in all material respects, to the RFP.

In response to MDAD's declination to reimburse APA the cost of certain benefits to employees, APA proposed a quotation management fee of \$380,000 per annum to absorb its cost of the un-reimbursement benefits to its employees. This was valued at \$102,000. APA did take exception to the RFP's requirement, as earlier suggested by MDAD. MDAD rejected APA's proposed exception.

In addition, ADA challenges LAZ's claim that the company and its employees have an unmatched track record of experience in airport parking and transportation operation,

characterizing said claim as "false." They also claim that LAZ's proposed documents do not comply with all the ACDBE requirements. Further, APA takes issue with the various allocation of points from the five-member Selection Committee. Though not recited herein, the procedure used and the point allocation made by CSC has been reviewed and considered by the Hearing Officer. The CSC had a first tier and a tier two evaluation. It should be noted that both APA and LAZ made oral presentations to the Selection Committee.

APA opines that had CSC awarded zero points to LAZ in the ACDBE category, APA would have outscored LAZ by over 400 points in the technical categories, and almost 300 points overall.

Following the oral presentations alluded to herein by both LAZ and APA, the CSC rescored the proposals. LAZ was awarded points in the ACDBE category that APA complains failed to comply with ACDBE's eligibility requirement. Apparently, there was a two-point differential. Subsequently, the County negotiated with both proposers. As a result, the County's Chief Negotiator sent APA an e-mail reaffirming that it wasn't going to reimburse APA for any additional fringe benefits for its employees. Thereafter, both proposers submitted their revised pricing, which was designated as their "best and final offer." Their respective management fees were reduced.

Ultimately, the County approved what it termed its final negotiations with LAZ resulting in its formal recommendation of award to LAZ. The Protestor argues that notwithstanding that 85 percent of the original evaluation criteria was focused on technicalities and not price, the recommendation did not reference any technical scores. As an adjunct to the bid process, there was an Inspector General's Report issued on February 7, 2020 which examined the issue of Labor Peace and reimbursable employee benefits. It found that the reimbursement language



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used was "unvetted", thereby making the procurement process unduly complicated, and also that some language utilized should not have been put into the advertised RFP. The County's response to the Protest takes issue with the Protestor's version of what actually occurred prior to the issuance of the recommendation. It also argues the untimeliness of the protest filing; to wit, a failure to file in May of 2019, which in and of itself disqualifies the Protestor. It points out that rather than file its Protest timely, that the Protestor began a seven-month period of "lobbying" elected Miami-Dade County officials and as a result the Protestor has thereby waived its right to protest. The County also argues that the County is not required to apply mandatory ACDBE goals in the RFP and may utilize race neutral measures instead, supporting its view that the ACDBE policy was merely one criteria to be evaluated as part of the bid process. It should be noted that this contract award proceeded through three phases; a Selection/Negotiating Committee phase, a TAP Committee phase, and a Best And Final Offer (BAFO). Part of the Hearing Officer's analysis is to determine whether the Selection Committee improperly allocated 16 points for ACDBE participation to LAZ, as it did not provide a copy of its subcontract with its ACDBE partner, Nationwide. Also, that the Selection Committee was swayed by alleged misrepresentations of LAZ, and that the Negotiating Committee was required to permit a proposer to maintain its existing level of employees.

None of these challenges impact the County's decision nor the process, which would give rise to a level high enough to overturn the recommended award to LAZ. While the Protestor takes issue with the Selection Committee scoring, it should be noted that the Court cannot overturn a procurement based on Selection Committee scoring errors. *See Securus Tech. Inc. v. Dep't of Cor.*, 2019 WL 1432197 (Fla.Div.Admin.Hrgs. 2019.).

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The Hearing Officer has considered the allegations by APA that LAZ made material representations in its proposal, (*i.e.*, LAZ improperly claims expertise of its corporate sister, Indigo) , and that LAZ's subcontractor, Nationwide, improperly claimed its experience. These claims apparently were considered by the examining decision makers during the process of these proceedings. They apparently felt that these claims did not rise to a level sufficient to disqualify LAZ.

The Hearing Officer agrees with the County and Intervenor that it was not arbitrary nor capricious for the County, after negotiations concluded, to allocate additional budget for employee benefits. As advertised in the RFP, the County indicated that it initially intended to reimburse for only six holidays and two weeks of vacation. The County maintained this position throughout the negotiations. APA maintains that it had to bill the excess cost of higher benefit levels, *i.e.*, ten days of leave and three weeks of vacation time, into its management fee. Had those benefits been reimbursed, APA claims, it could have offered a management fee of \$255,000 since its existing level of benefits was not reimbursable, it could therefore only offer management fee of \$360,000 a year. LAZ, by contrast, offered a management fee of \$149,000, and agreed to the stipulated benefits level, and was, thus, selected by the County as a superior offer. After negotiations concluded, and consistent with the County's rights under the contract, the County later concluded that it would allow up to nine holidays and three weeks of vacation. APA contends both that it was improper for the County to insist a lower benefits level during the negotiation, as APA's existing cost structure prevented them from hitting the floor. APA also argued that LAZ was improperly advantaged when the County determined, after negotiations concluded, that it would, in fact, allow for greater reimbursements.

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As an underlying matter, it is undisputed that the County has no legal obligation to structure contract requirements that contour themselves to any particular proposer's business model or cost structure. In fact, nothing in Florida Law requires all vendors to have equal cost in providing services to the state, nor would such a requirement be consistent with the purposes of procurement. *See Securus Tech. Inc. v. Dep't of Cor.* 2019 WL 1432197 (Fla.Div.Admin.Hrgs. 2019.). "That [a proposer] was out-negotiated is not a basis upon which a legal challenge may be sustained.... The [procurement] process inherently relies upon and necessitates vendor competition, in terms of both pricing and negotiation strategy." *Id.* It may, in fact, be true that APA's Union Agreement raised its cost of providing services to the County, but the law does not require the County, except to hire at contract cost, to accommodate APA's economic limitations. In fact, doing so would subvert the very purpose of competitive procurement. *Id.* at 12. (If Proposer "negotiated" a better deal on behalf of the state with its suppliers than did Protestor, or who was willing to accept a lower profit margin, or higher level of business..., that is a benefit and not a flaw in the procurement.).

The Intervenor's response parallels and adopts that of the County's argument, inasmuch as APA's claims are both untimely and without merit. It argues that APA didn't challenge any aspect of the process resulting in the award recommendation to LAZ, thereby making its protest untimely and ultimately a waiver of any right to protest; and, further, that nothing that the County did was arbitrary nor capricious, nor the product of dishonesty, fraud, illegality, oppression or misconduct. *See Liberty County v. Baxter Asphalt and Concrete v.*, 421 So. 2d 505, 507 (Fla. 1982).

It argues that in accordance with the County's requirements for this bid, that any

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protest must be filed within three work days of the filing of the award recommendation; to wit, the initial award recommendation was May 16, 2019, which would make any protest filing due on or before May 21, 2019, and that APA did not communicate or file any objection to the BAFO process, and fully participated in said process on an "equal playing field." Additionally, it argued that APA's protest should be dismissed as "untimely", and that even if APA had a right to challenge, it alleges that the three allegations of defects have no merit. It reiterates that LAZ's failure to initially submit certain drafts was properly waived by the County as a "minor irregularity", since it did not confer any economic advantage to LAZ over APA, and that both LAZ and APA provided complete Letters of Intent and utilization forms from their responsive subcontractors. Further, that the County correctly determined that LAZ made no material misrepresentations in its proposal, and that the County's decision to allocate additional budget funds, after negotiations concluded for employee benefits, was not arbitrary nor capricious. The Intervenor emphasizes that the County's post negotiation policy decision to reimburse the awarded vendor (APA or LAZ) the full cost of additional employee benefits required under the contract Labor Peace Agreement, eliminates APA's argument about "level playing field."

STANDARD OF REVIEW

It is well established under Florida Law that, "A public body has wide discretion in soliciting and accepting bids for public improvements in its decisions when based on an honest exercise of this discretion, it will not be overturned by a Court even if it may appear erroneous and even if reasonable persons disagree." *Baxter's Asphalt and Concrete*, 421 So. 2d at 507 ("Only a showing of clear illegality will entitle an aggrieved bidder to judicial relief.") "Judicial intervention in an agency decision is limited to those few occasions where fraud or corruption has influenced the conduct of officials. *Dep't of Trans.v. Groves-Watkins*

*Constructors*, 530 So. 2d 912, 914 (Fla. 1988) "The scope of review of a government's action with regards to competitive bidding is limited to whether the purpose of competitive bidding has been subverted, in short, whether the Agency acted fraudulently, arbitrarily, illegally or dishonestly." *Id.*

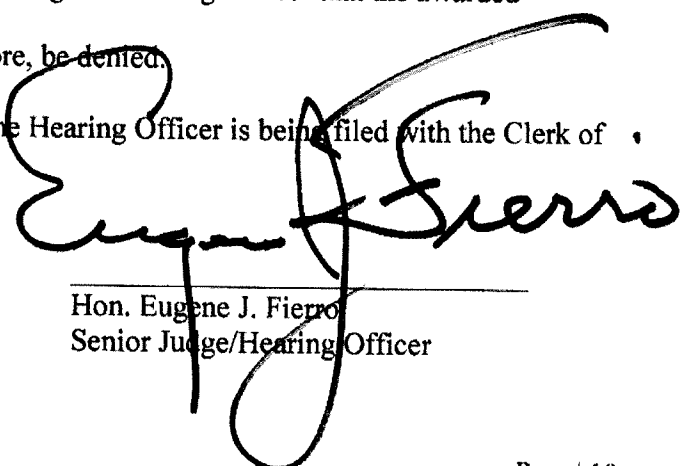
As the Third District Court of Appeal noted in the prior case involving the County, decisions with respect to competitively bid contracts are given "strong judicial deference." *Miami-Dade County v. Church and Tower Inc.*, 715 So. 2d 1084, 1089 (Fla. 3<sup>rd</sup> DCA 1998). So long as such a public 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. *Id.* at Page 4 1090. The Board of County Commissioners' decision which directed the County not to make a recommendation to award to LAZ, but rather enter into dual negotiations with both of these parties, did, in fact, place both parties on a "level playing field" and gave them equal opportunity.

#### CONCLUSION

Based upon the foregoing findings, the undersigned Hearing Officer finds that the County did not act in an arbitrary or capricious manner in awarding the contract to LAZ.

It is therefore recommended by the undersigned Hearing Officer that the awarded contract be upheld and that the Protest, therefore, be denied.

This Report and Recommendation of the Hearing Officer is being filed with the Clerk of the Board this 10<sup>th</sup> day of July, 2020.



Hon. Eugene J. Fierro  
Senior Judge/Hearing Officer

Copies furnished to all counsel of record