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

Memorandum

MIAMI-DADE COUNTY

Date: March 15, 2011

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

Resolution No. R-202-11

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

From: George M. Burgess
County Manager

Subject: Recommendation for Approval to Award Contract No. 8958-4/15: Water Meter Box Covers

RECOMMENDATION

It is recommended that the Board of County Commissioners approve award of this contract to A & B Pipe and Technical Trading Corporation for purchase of water meter box covers for the Miami-Dade Water & Sewer Department.

CONTRACT NUMBER: 8958-4/15

CONTRACT TITLE: Water Meter Box Covers

TERM: One year with four, one year options-to-renew

APPROVAL TO ADVERTISE: April 15, 2010

METHOD OF AWARD: To the two responsive and responsible bidders offering the lowest aggregate price as primary and secondary vendors.

PREVIOUS CONTRACT AMOUNT: None

CONTRACT AMOUNT: $240,000*
*Should the County choose to exercise the four, one year options-to-renew, the cumulative value will be $1,200,000.

USING/MANAGING AGENCIES AND FUNDING SOURCES:

Department	Allocation	Funding Source	Contract Manager
Water & Sewer	$240,000	Proprietary Funds	Gregory Hicks

DPM AGENT / OFFICER: Albert Tourtz, Department of Procurement Management

VENDORS RECOMMENDED FOR AWARD:

Vendor	Address	Principal
A & B Pipe and Supply, Inc. (Local vendor)	444 Brickell Avenue Suite 300 Miami, FL 33131	Stewart Merkin
Technical Trading Corp. (Local vendor)	3515 NW 60 Street Miami, FL 33142	Lambert Morris

PERFORMANCE DATA: There are no performance issues with the recommended firms.

COMPLIANCE DATA: There are no compliance issues with the recommended firms.

VENDORS NOT RECOMMENDED FOR AWARD: HD Supply Water Works is not in compliance with the Small Business Enterprise (SBE) participation provisions as indicated in the bid under Section 2.2 (Small Business Contract Measures Set-aside) and could not be considered for award on this contract.

Corcel Corporation's bid did not meet specifications as required by the solicitation and could not be considered for the award on this contract.

REVIEW COMMITTEE DATE: March 3, 2010, Item #2-02

CONTRACT MEASURES: SBE Bid Preference was applied in accordance with the Ordinance.

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: The Local Preference will be applied in accordance with the Ordinance.

ESTIMATED CONTRACT COMMENCEMENT DATE: Upon approval by the Board of County Commissioners and expiration of the Mayoral veto period.

BACKGROUND

The purpose of this solicitation is to establish a contract for purchase of water meter box covers for the Miami-Dade Water and Sewer Department (WASD). These water meter box covers replace the current cast iron covers and are manufactured of recycled composite plastic, RHC Rubber and a UV stabilizer material. The water meter box covers have a recessed cavity section for installation of electronic radio transmitters (ERT). The ERTs inserted in these covers will work in conjunction with automated meter reading equipment.

WASD has installed Automated Meter Reading (AMR) equipment throughout the County. The installation of an AMR system is a condition required by WASD's 20-year Water Use Permit. AMR involves the use of electronic devices that read water and other meters automatically. WASD's system will include transmitters to convey data from individual meters to a central database housed by WASD. AMR is already in use at several large cities across the country including Philadelphia, Atlanta, and Denver. The system is expected to provide timely, accurate meter readings, accurate billing, and the ability to detect leaks before they result in costly repairs.

Additionally, AMR will help reduce the emission of greenhouse gases in Miami-Dade as WASD employees will need to drive less than they do now to read meters across the County. Another environmentally friendly benefit of AMR will be the use of these new water meter box covers. In order for the AMR system to transmit usage information to WASD, water meter box covers have to be made of non-metallic materials. For this reason, WASD requires water meter box covers be made of 100-percent recycled materials. This contract for recycled meter box covers is WASD's way of going green to help the environment.

In order to ensure that water meter box cover proposals met the non-metallic 100-percent recycled material requirements, a testing procedure for samples was carried out in accordance with the solicitation. The testing procedure consisted of two parts: the buoyancy test, and the laboratory testing. All samples initially passed the buoyancy test. Although the covers passed the buoyancy test, staff noticed white marks on the side of one of the samples submitted by Corcel Corporation which crumbled when scratched. Therefore, a laboratory testing for the Corcel Corporation sample was conducted.

After receiving the independent laboratory test results, WASD staff concluded the sample submitted by Corcel Corporation failed the laboratory testing. The failed laboratory test stems from a positive result for a substance not listed in the bid specifications. This additional substance was identified as Barium Sulfite. This substance is used as filler in plastics to increase density. The Barium component of Barium Sulfite is categorized by the Periodic Table of Elements as a metal and is not a recycled material. This contract for recycled material water meter box covers is a green initiative. Therefore, the offer submitted by Corcel Corporation was not accepted as it did not meet technical specifications and green standards.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: March 15, 2011

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

SUBJECT: Agenda Item No. 8(O)(1)(C)

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)(C)
3-15-11

RESOLUTION NO. R-202-11

RESOLUTION APPROVING AWARD OF CONTRACT NO. 8958-4/15: WATER METER BOX COVERS, TO A & B PIPE SUPPLY, INC., AND TECHNICAL TRADING CORP. IN THE INITIAL AMOUNT OF $240,000 AND THE TOTAL CUMULATIVE AMOUNT OF $1,200,000 IF ALL RENEWALS ARE EXERCISED; AND AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE THE CONTRACT AND TO EXERCISE ANY RENEWAL AND CANCELLATION PROVISIONS 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 hereby approves the award of Contract no. 8958-4/15: Water Meter Box Covers to A & B Pipe and Supply, Inc., and Technical Trading Corp., in the initial amount of $240,000 and the total cumulative amount of $1,200,000 if all renewals are exercised; and authorizes the County Mayor or designee to execute the contract and to exercise any renewal and cancellation provisions contained therein.

The foregoing resolution was offered by Commissioner **Audrey Edmonson**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

5

Joe A. Martinez, Chairman			aye
Audrey M. Edmonson, Vice Chairwoman			aye
Bruno A. Barreiro	aye	Lynda Bell	aye
Jose "Pepe" Diaz	aye	Carlos A. Gimenez	aye
Sally A. Heyman	aye	Barbara J. Jordan	absent
Jean Monestime	aye	Dennis C. Moss	aye
Natacha Seijas	absent	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 15th day of March, 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: DIANE COLLINS
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman

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

CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK MIAMI-DADE GOVERNMENT CENTER
SUITE 17-202
111 N.W. 1st Street
Miami, FL 33128-1983
Telephone: (305) 375-5126
Fax: (305) 375-2484

January 28, 2011

Mr. Ray L. Corona
Vice President and Managing Director
Corcel Corp.
2461 N.W. 23rd Street
Miami, Florida 33142

Re: Bid Protest – Bid No. 8958-4/15
Water Meter Box Covers

Dear Mr. Corona:

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation filed by the hearing examiner in connection with the foregoing bid protest hearing which was held on January 25, 2011.

Should you have any questions regarding this matter, please do not hesitate to contact Fara C. Diaz at (305) 375-1293.

Sincerely,
HARVEY RUVIN, Clerk
Circuit and County Courts

By Diane Collins
Diane Collins, Division Chief
Clerk of the Board Division

DC/fcd
Attachments

cc: Honorable Carlos Alvarez, Mayor, Miami-Dade County (via email)
George Burgess, County Manager (via email)
Hugo Benitez, Assistant County Attorney (via email)
Henry Gillman, Assistant County Attorney (via email)
Miriam Singer, Director, Dept. of Procurement Management (via email)
Albert Touriz, Senior Procurement Contracting Agent, DMP (via email)
Walter Fogarty, DPM (via email)
John Renfrow, Director, Miami-Dade Water & Sewer Dept. (via email)
Kevin J. Taylor, Esq. (via email)
Ricardo R. Corona, Esq. (via email)
Augusto Maxwell, Esq. (via email)
Enrique Collazo, Esq. (via email)
All Bidders (via US mail)

RECEIVED BY CLERK
Circuit & County Courts
DADE COUNTY, FLORIDA

JAN 28 2011
8:36 AM Fcd.
CLERK OF BOARD

CLERK OF THE BOARD OF COUNTY COMMISSIONERS

IN RE: BID PROTEST OF CORCEL CORP. OF RECOMMENDATION OF AWARD FOR CONTRACT FOR ITB NO.8954 -4/15 WATER METER BOX COVERS

REPORT AND RECOMMENDATION OF HEARING EXAMINER

PRELIMINARY STATEMENT

This matter concerns a bid protest filed by Corcel Corp. ("Corcel") challenging the County Manager's recommendation to award a contract for the purchase of Water Meter Box Covers for the Miami-Dade Water and Sewer Department through Invitation to Bid ("ITB") No. 8954-4/15.

The final hearing took place on January 25, 2010 in accordance with Section 2-8.4 of the Code of Miami-Dade County and Implementing Order No. 3-21. Testimony and exhibits were received from Corcel, Miami-Dade County ("County") and Intervenor A & B Pipe Supply Inc. ("A & B Pipe")

All participants were represented by legal counsel. Kevin Taylor, Esq. of Kevin J. Taylor, P.A. represented Corcel, Henry Gillman, assistant county attorney, represented Miami-Dade County and Augusto Maxwell represented A & B Pipe.

The Hearing Examiner, in arriving at this recommendation, has considered all documentation submitted, as well as the testimony and evidence presented at the hearing, including the technical and other specifications and conditions required by the County as part of the ITB and the bidding process. The Hearing Examiner also considered the technical testing and evidence regarding the composition and specifications required for the subject water meter covers as well as the denial of the protestor's bid and the reasons it was denied.

Although the Hearing Examiner does not recite each and every statement in the testimony of the witnesses, the Hearing Examiner has nonetheless considered the testimony of the witnesses and the probative value of the evidence presented and the witnesses testimony.

FINDNGS OF FACT

1. In December 2008, the Miami-Dade Water and Sewer Department ("WASD") announced pilot testing of Automated Meter Reading Systems to remotely read water meters.

2. Pursuant to that pilot, the County advertised and Invitation to Bid ("ITB") for water meter covers on April 16, 2010.

3. Section 2.1 of the ITB provides that the purpose of the solicitation is to establish a contract for the purchase of water meter box covers in conjunction with the County's needs on an as needed when needed basis.

4. The ITB is very specific in the requirements for the meter covers. For example, Section 3.3 of the Technical Specifications require that meter covers be manufactured of recycled composite plastic, RHC Rubber and a UV stabilizer material. It further required meter covers to be H-20 load rated and non-metallic for radio read.

5. Further, Section 3.3 provides that "all standard water meter covers shall be similar to Pentek Access Boxes or approved equal."

6. Section 3.5 of the ITB provides for a buoyancy testing procedure to ensure that the covers do not float.

7. Corcel submitted a bid proposing the County purchase "RHINO" covers manufactured by , Southeastern Distributors, Inc. Other bids proposed the County purchase the Pentek product mentioned in paragraph 5 herein.

8. Corcel's bid included information to show that its meter cover was similar to Pentek or an approved equal.

9. Upon the receipt of Corcel's sample meter covers, the County submitted both the RHINO and the PENTEK covers to a buoyancy test.

10. During or shortly after that test, WASD observed an unknown white substance that was embedded throughout one of the RHINO meter cover.

11. The County's submission stated that the white substance crumbled when scratched, however the Hearing Examiner did not hear such evidence.

12. Corcel's meter cover was sent to a laboratory for testing of the white substance. The PENTEK cover was not sent for similar testing.

13. The laboratory found that the substance was similar to "possible barium sulfite."

14. Upon learning of the laboratory test results, Corcel submitted a letter from the manufacturer, Southeastern Distributors, Inc. ("Rhino") which stated that the substance is "barium sulfate" and provided its percentage as well as percentages of other materials in the composition of the covers. Therein lies the rub.

15. There is a disputable issue as to the percentage of barium sulfate, UV stabilizer, and RHC rubber in the Rhino cover.

16. Corcel presented letters (one in the form of an affidavit, though not verified), which the Hearing Examiner considered at the hearing.

17. Notwithstanding multiple submissions by Corcel (not enumerated here) as to the composition of its Rhino product, the County Manager rejected Corcel's bid for multiple reasons, including that the UV stabilizer material in Corcel's water meter covers contained barium which is a metal and is not a recycled material.

18. Following the Recommendation for Award, Corcel timely filed its bid protest and this hearing was held.

19. The Manager rejected Corcel's bid because the Rhino product did not meet the bid specifications including the nonmetallic and recycled materials requirements.

20. .Corcel's protest took issue with the County's recommendation on several fronts, and Corcel's argument included:

a) *The specifications do not require the UV Stabilizer component in the product to be recycled material.*

b) *The specifications do not require the UV stabilizer component of the product to be non-metallic.*

c) *The non-metallic requirement is solely for the purpose of radio read capability and the barium, while a metal, does not impede the RHINO products, radio read capability.*

d) *The manufacture of the RHINO products have been supplying similar, but not identical, products to state and local agencies throughout Florida and otherwise, for well over 10 years.*

e) *The Barium in the RHINO covers is an "earth" metal that will have no hazardous effect on the environment, as compared to the Pentek product which, according to Pentek themselves, is "produced with less than the maximum allowable levels of the following substances: Lead, Mercury, Cadmium, Hexavalent Chromium, PBB and PBDE."*

f) *Corcel argued that the first four (4) of these six (6) substances are metals. All six substances are highly toxic and even in less than the restricted substance level will still some adverse effect on the environment.*

g) *Vendor's who bid the PENTEK product submitted documents which indicated that the PENTEK UV stabilizer was composed of a non recycled material.*

h) *Corcel's bid was 44% lower than the other bids and in the event of the full implementation of the AMR / Water Loss Reduction initiate this difference would result in a savings to the county of over 5 Million dollars.*

21. Juan Pelay, Assistant Superintendent for the Miami-Dade Water and Sewer Department's Meter Installation and Maintenance Section, testified that he was responsible for the 2008 Pilot Project which resulted in the installation of over 1000 Pentek meter covers.

22. Mr. Pelay testified that the Pentek meter covers have been in use in Miami-Dade County since 2008 and that they work well with no complaints by either consumers or by the technical workers in the field.

23. Section 2.6.1.1 of the Special Conditions of the ITB specifically requires that "the items to be purchased hereunder shall be the products of a manufacturer that has been regularly engaged in the production of water meter box covers as specified for a minimum period of at least two (2) years.

24. The Rhino product submitted by Corcel has not been in the field for two years as required by the ITB.

LEGAL STANDARD OF REVIEW AND DISCUSSION

It is well-settled Florida law that "a public body has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree." *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505 (Fla. 1982); *Miami-Dade County v. Church & Tower, Inc.* 715 So. 2d 1084, 1089 (Fla. 3rd DCA 1998). "The hearing officer's sole responsibility [in reviewing a protest] is to ascertain whether the agency acted fraudulently, arbitrarily, illegally or dishonestly." *Department of Transportation v. Groves-Watkins Constructors*, 530 So.2d 912, 914 (Fla. 1988). The hearing examiner cannot step into the shoes of the County Manager and become the contracting authority. *See e.g., Miami-Dade County v. Church & Tower, Inc.* 715 So. 2d 1084, 1089 (Fla. 3rd DCA 1998)).

Corcel alleges that the County Manager's rejection of Corcel's bid was arbitrary. The burden is on Corcel to establish that the County Manager acted in an arbitrary and capricious manner and that there was no sound basis for the Manager's decision. In attacking a contracting entity's decision on arbitrariness, "the test is 'whether the contracting agency provided a coherent and reasonable explanation of its exercise of discretion, and the disappointed bidder bears a 'heavy burden' of showing that the award decision had no rational basis.'" *Impresa Construzioni Geom. Domenico Garufi v. United States*, 238 F.3d 1324, 1332 (Fed. Cir. 2001) (citing *Saratoga Dev. Corp. v. United States*, 21 F.3d 445, 456 (D.C. Cir. 1994).

Since the evidence submitted by Corcel is insufficient to demonstrate that the County's action was arbitrary, illegal, dishonest or fraudulent, the protest filed by Corcel is hereby denied.

RECOMMENDATION

Based upon due consideration of the witnesses, exhibits, law, argument of counsel and foregoing findings, the County Manager did not act arbitrarily or capriciously in rejecting Corcel's bid. It is therefore Recommended that the County Manager's recommendation to award Contract for ITB No. 8958-4/15 to A & B Pipe and Technical Trading Corporation be upheld.

This Report and Recommendation of the Hearing Examiner is being filed with the Clerk of the Board on this 27 day of January, 2011, with directions to mail a copy to all participants in the Bid Protest proceedings.

Eugene J. Fierro

Honorable Eugene J. Fierro

Hearing Examiner