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

Memorandum

MIAMI-DADE COUNTY

Date: September 18, 2012

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

Agenda Item No. 8(N)(1)

From: Carlos A. Gimenez
Mayor

Subject: Waiver of Formal Bids and Modification of Contract for Paratransit Transportation Services

Resolution No. R-737-12

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the waiver of formal bid procedures and bid protest procedures pursuant to Section 5.03(D) of the Home Rule Charter and Sections 2-8.1 and 2-8.4 of the County Code by two-thirds vote of the Board members present in order to modify the contract for Paratransit Transportation Services for additional time and spending authority for the Miami-Dade Transit Department (MDT) to continue to purchase demand response paratransit transportation services in compliance with American with Disabilities Act regulations. These services will continue to be obtained at the reduced rates approved by the Board on March 1, 2011 (R-166-11).

This modification will grant additional time to complete the negotiation of a contract and allow for a proper transition to the successor contract.

This contract modification package is placed for Committee review pursuant to Miami-Dade County Code section 29-124(f). This contract modification recommendation may only be considered by the Board if the Citizens' Independent Transportation Trust (CITT) has forwarded a recommendation to the Board prior to the date scheduled for Board consideration or 45 days have elapsed since the filing with the Clerk of the Board of this contract award recommendation. If the CITT has not forwarded a recommendation and 45 days have not elapsed since the filing of this award recommendation, I will request a withdrawal of this item. The contracts in this package are scheduled for the September CITT meeting.

CONTRACT NUMBER& TITLE: TR04-TSB – Paratransit Transportation Services

TYPE OF CHANGE: Additional time and spending authority

DEPARTMENT(S), FUNDING SOURCE, AND FISCAL IMPACT:

Department	Existing Allocation	Additional Allocation	Modified Allocation	FUNDING SOURCE
MDT	$320,340,000	$19,980,000	$340,320,000	MDT Operating (Non-federal)

This approval will allow for the contract to be extended on a month-to-month basis at the County's discretion, for a period up to six months; if the County chooses to exercise the six, one-month OTRs, the cumulative contract value will be $340,320,000.

CURRENT EXPIRATION: September 30, 2012

MODIFIED EXPIRATION: Up to March 31, 2013, on a month-to-month basis.

PROCUREMENTOFFICER: Fred Simmons, Jr.

VENDOR INFORMATION:

Vendor	Principal Address	Principal
Advanced Transportation Solutions, LLC (ATS)	815 N.W. 57th Avenue, Suite 130 Miami, FL	Raymond Gonzalez

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. The findings related to Contractor responsibility are outlined below. This information is being provided pursuant to Resolution R-187-12.

In January 2010, an investigation by the Miami-Dade Police Department (MDPD) resulted in the arrest of 16 individuals employed by ATS services providers for alleged criminal activities related to fraudulent trips billed from March 3, 2004 to July 14, 2007. The County and ATS settled all claims related to liquidated damages, in the amount of $300,000.

Audit and Management Services (AMS) advised MDT in December 2010 that a review of the MDT Special Transportation Services Division (STS) client database disclosed ATS billed MDT for 759 trips taken by 100 deceased clients after their deaths between March 1, 2004 and September 30, 2009. These incidents were reported to the Board as part of the previous extension approved on September 1, 2011 (R-678-11). On January 20, 2011, ATS reimbursed the County $22,544 for these unauthorized billings. AMS continues to review this service and the current service provider to ensure the service providers are properly invoiced.

BACKGROUND

In October 2011, the County issued a new solicitation (RFP No. 800) to secure a provider for Special Transportation Services. On December 16, 2011, three proposals were received in response to the solicitation. The proposal from Professional Medical Transportation was deemed non-responsive by the County Attorney's Office (copy attached), because the proposal did not include the required Buy America certification form. The two remaining proposals from Super Nice STS, Inc. d/b/a Transportation America (Super Nice), and First Transit, Inc. (First Transit) are currently being evaluated by the Evaluation/Selection Committee (Committee). The Committee is comprised of professional County staff as well as STS riders. The County is working diligently with the Committee members to schedule meetings based on their availability to timely address areas of concern, and provide all the information they need to perform a meaningful evaluation of proposals. During the evaluation of proposals, questions surfaced regarding some of the information provided. Staff worked closely with the County Attorney's Office to review the proposals and determine the best method to obtain clarity regarding the information submitted. On March 22, 2012, a request was sent to Super Nice and First Transit requesting clarification of material information contained in their proposal that is relevant to the evaluation of their proposals. The Proposers were asked to provide proof of all contracts listed as references, and provide details regarding the experience of the firm and its key personnel. First Transit's response to the letter was received on April 3, 2012; Super Nice's response was received on April 5, 2012. This information was thoroughly reviewed by procurement staff. A request for legal opinion and guidance was sent to the County Attorney's Office on May 4, 2012. A legal opinion was provided May 29, 2012 (copy attached). The opinion was reviewed with the Committee at its June 29th meeting. Two Committee members, that are STS patrons, advised they needed more time to review the legal opinion before completing their evaluation. At the Committee meeting of August 2, 2012, the County Attorney

reviewed the legal opinion with the Committee, and addressed questions. Afterwards, Committee members finalized the technical scoring and set a date for opening the price proposals. Pricing submissions will be reviewed and scored at a subsequent Committee meeting. The Evaluation/Selection Committee will then submit the results of the evaluation to me, with their recommendation to negotiate with the Proposer with the lowest price. Negotiations will be conducted, and an award recommendation will be submitted for consideration to the appropriate committee. If approved, a waiver to the next available Board meeting for final approval will be requested.

Once a contract is approved, the awarded Contractor will need time to mobilize its operations to ensure continuity of service to people with disabilities. Efforts required for the Contractor to become fully operational include, securing a fleet of vehicles, purchase, install, and successfully test electronic equipment; Automated Vehicle Location/Global Positioning System (AVL/GPS), Mobile Data Terminals and long-range Radio Frequency Identification (RFID) card readers, as required by the contract, and secure personnel. This transition period is estimated to take up to four months.

The County recognizes the need to secure a contractor for STS and is committed to continuing these essential services for our disabled community. ATS currently provides STS to the County. This month-to-month contract extension with ATS is recommended with a keen awareness of the time and process required for contract award, and the transition period required once a contractor is identified.

Alina T. Hudak
County Manager/Deputy Mayor

MEMORANDUM

(Revised)

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

DATE: September 18, 2012

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

SUBJECT: Agenda Item No. 8(N)(1)

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(N)(1)
9-18-12

RESOLUTION NO. R-737-12

RESOLUTION AUTHORIZING EXECUTION OF A WAIVER OF FORMAL BID PROCEDURES AND BID PROTEST PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER AND SECTIONS 2-8.1 AND 2-8.4 OF THE COUNTY CODE BY TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT IN ORDER TO MODIFY THE CONTRACT FOR PARATRANSIT TRANSPORTATION SERVICES FOR ADDITIONAL TIME AND SPENDING AUTHORITY FOR THE MIAMI-DADE TRANSIT DEPARTMENT (MDT) TO CONTINUE TO PURCHASE DEMAND RESPONSE PARATRANSIT TRANSPORTATION SERVICES IN COMPLIANCE WITH AMERICAN WITH DISABILITIES ACT REGULATIONS IN THE AMOUNT OF $19,980,000 WITH ADVANCED TRANSPORTATION SOLUTIONS, LLC, AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN, AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS CONTRACT NO. TR04-TSB – SUPPLEMENTAL AGREEMENT NO. 5

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 the execution of an agreement in the amount of $19,980,000 with Advanced Transportation Solutions, LLC, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County and to exercise any cancellation and renewal provisions and all other rights contained therein, and authorizes the use of Charter County Transportation Surtax Funds.

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

Joe A. Martinez, Chairman			**aye**
Audrey M. Edmonson, Vice Chairwoman			**aye**
Bruno A. Barreiro	**aye**	Lynda Bell	**absent**
Esteban L. Bovo, Jr.	**aye**	Jose "Pepe" Diaz	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Rebeca Sosa	**aye**	Sen. Javier D. Souto	**aye**
Xavier L. Suarez	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of September, 2012. This resolution shall become effective upon the earlier of (1) 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, 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: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

2012 AUG -3 AM 10:

SUPPLEMENTAL AGREEMENT NO. 5

Contract Number: **TR04-TSB-approved by Resolution No. R-1099-04 adopted September 09, 2004**

Contract Title: **Paratransit Transportation Services**

Contractor: **Advanced Transportation Solutions, LLC**
815 NW 57th Avenue, Suite 130
Miami, FL 33126

In accordance with the above referenced Contract, this supplement when properly executed, becomes a part of the Contract and shall provide for the following:

1. Provision for the Contract to be extended for up to six additional months, on a month-by-month basis (October 1, 2012 through March 30, 2013) at the County's discretion.

All terms, covenants and conditions of the original Contract and any supplemental agreements issued thereto shall remain in full force and effect, except to the extent herein amended.

IN WITNESS WHEREOF, the parties have executed this Supplemental Agreement to County Contract No. TR04-TSB.

Contractor		County	
By:		By:	
Name:		Name:	
Title:	Mgr. & CEO	Title:	
Date:	8/1/12	Date:	
Attest:	Corporate Secretary/Notary Public	Attest:	Clerk of the Board

Corporate Seal/Notary Seal

Approved as to form and legal sufficiency.

Notary Public State of Florida
George Lima
My Commission EE 206629
Expires 09/07/2016

Memorandum

MIAMI-DADE COUNTY

Date: January 26, 2012

To: Namita Uppal
Contracting Officer
Internal Services Department

From: Bruce Libhaber
Assistant County Attorney

Subject: RFP 800 (Special Transportation Services)
Proposer: Professional Medical Transportation Corp.

You have asked this office if the bid submitted by Professional Medical Transportation Corp. ("Professional Medical") is responsive.

FACTS

We rely on the information provided in your January 25, 2012 e-mail correspondence to me regarding the bidding issues, the terms of the RFP itself and the proposal submitted by Professional Medical. The purpose of the RFP is to establish a contract for the purchase of special transportation services for Miami-Dade Transit. This contract is anticipated to be funded, at least in part, with federal funds. As such, Federal Transit Administration (FTA) regulations have been included in the RFP solicitation documents. In particular, this RFP included a Buy America Certificate of Compliance or Non-Compliance. (Exhibit FED-BY2, p.105 of RFP 800) Professional Medical submitted and signed the Buy America form. Professional Medical did not however, check any of the three boxes on the form indicating whether or not it was certifying it would or would not comply with the Buy America provisions. You have asked us to determine whether this failure to fill out the form renders the proposal as non-responsive.

DISCUSSION

As mentioned above, it is anticipated that the contract arising from this RFP will be funded, at least in part, with federal funds. As such, FTA procurement guidelines are to be included and followed in this RFP solicitation. One of the governing FTA regulations applicable to this particular procurement is the Buy America requirement when the purchase of rolling stock is involved with the contract. 49 CFR Part 661, Section 661.13(b) states " A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (Exhibit FED-BY2) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive." In this instance, Professional Medical qualifies as a bidder or offeror. Miami-Dade County, through Miami-Dade Transit, is an FTA recipient. RFP 800 is for an FTA-funded contract. This contract is not subject to a general waiver of the Buy America provisions. Professional Medical, in its submittal, did not complete the Buy America certification form nor commit to comply with the Buy America provisions. As such, the clear, unambiguous language of the 49 CFR Part 661 mandates a finding of non-responsiveness.

In addition, Attachment H to RFP 800 (p. 114) includes the very same language cited above from 49 CFR Part 661. Furthermore, the Buy America form provided in RFP 800 (p.105) states "If the bidder . . . submits the wrong certification of compliance, that bid is non-responsive and cannot be considered." Therefore, the RFP itself clearly states that Buy America is a requirement, the submittal of a correct Buy America form needed to be included with the proposal, and the consequence of failing to

comply is a rejection of the proposal as non-responsive. A signed, blank Buy America form does not indicate that the proposer has committed to meeting this federal requirement.

For the aforementioned reasons, based on the clear language of the applicable federal regulations and the RFP documents, the proposal of Professional Medical must be rejected as non-responsive.

Bruce Libhaber
Assistant County Attorney

Memorandum

MIAMI-DADE COUNTY

Date: May 29, 2012

To: Namita Uppal/Fred Simmons, Jr.
Procurement Contracting Division
Internal Services Department

From: Bruce Libhaber
Assistant County Attorney

Subject: Legal Opinion for RFP 800, Special Transportation Services

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This memorandum is in response to your inquiries dated May 4, 2012 and May 18, 2012 (inquiries restated in italics below, attachments to inquiries not included in this memorandum). You asked for guidance related to the above-referenced Request for Proposals ("RFP"). In particular, you presented several issues with respect to the proposals from (A) Super Nice STS, Inc. d/b/a Transportation America and (B) First Transit, Inc. My opinion follows each question below:

On December 16, 2011, three proposals were received in response to the Request for Proposals (RFP) No. 800, Special Transportation Services. The proposal from Professional Medical Transportation was deemed non-responsive by your office on January 26, 2012. The remaining two proposals from Super Nice STS, Inc. d/b/a Transportation America and First Transit, Inc. were distributed to the evaluation/selection committee appointed by the County Mayor for the RFP. The Federal Employer Identification Numbers (FEIN) are as follows:

a) *Super Nice STS, Inc. d/b/a Transportation America: 320127752*
b) *First Transit, Inc.: 231716119*

On March 22, 2012, letters (Attached herein as Exhibit A) requesting proof of all contracts listed by proposers in their proposal in response to Attachment G, Proposer Information, of the subject RFP were sent to both proposers. This Attachment G is included as Exhibit B to this document. The information provided by proposers in response to Attachment G of the RFP will be evaluated by the evaluation/selection committee in accordance with the evaluation criteria specified in Section 4.2 of the RFP attached herein as Exhibit C.

Both proposers provided information in response to the March 22, 2012 letter. The responses are attached herein as Exhibit D (Response from Super Nice STS, Inc.), and Exhibit E (Response from First Transit, Inc.).

Based on the review of the proposal and responses to the March 22 letter, your legal opinion/guidance is requested on the following issues:

(A) ***Issues related to the proposal from Super Nice STS, Inc. d/b/a Transportation America***

i. *Page 1 of the proposal from Super Nice STS, Inc. (Exhibit F) lists Transportation America, Inc. as the d/b/a for Super Nice STS, Inc. Transportation America, Inc. is a separate legal entity from the Super Nice STS, Inc. The FEIN of Transportation America, Inc. is 651120042. This FEIN is different from the FEIN of Super Nice STS, Inc. Both of these firms are owned by Mr.*

Raymond Gonzalez and Rene Gonzalez. Transportation America, Inc. is neither the prime nor a sub-contractor to Super Nice, STS, Inc.

Question 1: *How should the evaluation/selection committee consider this inconsistency in the proposal submitted by Super Nice STS, Inc.?*

Answer 1: The inclusion of "Inc." after Transportation America in the cover letter of the proposal is immaterial and should be ignored. Super Nice STS, Inc. has registered Transportation America with the Florida Secretary of State as a fictitious name. (A copy of the filing is attached). The misstatement of a d/b/a name on one page of the proposal does not affect the evaluation of the proposal nor provide a proposer with an unfair advantage. This is consistent with the fact that the proposer submitted its proposal and signed it using Super Nice STS, Inc., d/b/a Transportation America. *See* Super Nice STS, Inc., d/b/a Transportation America Proposal at Form A-1 (proposer identification and authorized signature).

In reviewing the entire proposal submitted by Super Nice STS, Inc. d/b/a Transportation America, it is clear that the intent is to bind proposer Super Nice STS, Inc. The cover letter itself, including the page with the erroneous use of "Inc.," is labeled "Transportation America Proposal" and includes headers and footers stating "Transportation America." In addition to Form A-1, Super Nice STS, Inc. lists Transportation America as the d/b/a in other affidavits and signed forms, including Form A-2 (lobbyist registration), Form A-3 (acknowledgement of addenda); Form A-5 (subcontractor identification form), Form A-6 (fair subcontracting policies), Prime and Subcontractors Information Form (Attachment F), Exhibit FED-DB-1 (Attachment F, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion [Lower Tier Covered Transaction]), Exhibit FED-LB1 (Lobbying Certification), Exhibit FED-DA1 (Certification of Performance of Safety-Sensitive Functions), and Information for MDT Bidders List.

ii. *In response to item 1 (A) of the Attachment G of the RFP, the proposal from Super Nice STS, Inc. listed the following contracts from the past six (6) years to demonstrate proposers' experience with similar services. See pages 7 to 21 under Tab 3-1A of the proposal.*

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Client	*Proposal Page #*	*Information received in Response to County's March 22, 2012 letter*	*Information from Sunbiz.org*
Medicare	*Page 8 under Tab 3-1A*	- *There is no hard copy of the contract.* - *Providers go through "qualification" process.* - *Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service.*	
Medicaid	*Page 9 under Tab 3-1A*	- *There is no hard copy of the contract* - *Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service. Express, Inc.*	*FEIN of MCT Express, Inc.: 651002016*
Leon Medical Center Health Plan	*Page 10 under Tab 3-1A*	- *Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service.*	*FEIN of MCT Express, Inc.: 651002016*
Leon Medical Center Health Plan	*Page 11 under Tab 3-1A*	- *Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service.*	
Baptist Health Systems	*Page 13 under Tab 3-1A*	- *Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service and Medical Care Express, Inc.*	*FEIN of MCT Express, Inc.: 651002016 and FEIN of Medical Care Transportation, Inc.: 650630663*
Veterans Administration Hospital	*Page 14 under Tab 3-1A*	- *There is no hard copy of the contract.* - *Providers go through an approval process.* - *Contractor is Medical Care Transportation, Inc. :*	*FEIN of Medical Care Transportation, Inc.: 650630663*
Preferred Care Partners	*Page 16 under Tab 3-1A*	- *Contractor is Medical Care Transportation, Inc.*	*FEIN of Medical Care Transportation, Inc.: 650630663*
Preferred Care Partners	*Page 17 under Tab 3-1A*	- *Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service.*	*FEIN of MCT Express, Inc.: 651002016*
Bascom Palmer Eye Institute	*Page 19 under Tab 3-1A*	- *Contractor is Medical Care Transportation, Inc.*	*FEIN of Medical Care Transportation, Inc.: 650630663*
University of Miami Transportation Services	*Page 20 under Tab 3-1A*	- *Contractor is Medical Care Transportation, Inc.*	
Office of the State Attorney Transportation Services	*Page 21 under Tab 3-1A*	- *Contractor is Medical Care Transportation, Inc.*	

Question 2a: *Can the evaluation/selection committee consider the above contracts under the experience category of the proposer (RFP Attachment G, item # 1A)? Please note that the proposer is a different legal entity than the contractors listed above.*

Answer 2a: No, the evaluation/selection committee cannot consider contracts which involve separate and distinct legal entities from the proposer.

Question 2b: *Can the evaluation/selection committee consider the above contracts under the experience category its key personnel (RFP Attachment G, item # 1E) since Mr. Raymond Gonzalez is the owner of companies listed above.*

Answer 2b: Yes, the evaluation/selection committee can consider performance under the contracts referenced in your memorandum under the experience category of its key personnel to the extent that the evaluation/selection committee determines that such "key personnel" had a role in the other contract(s).

iii. *In response to item 1 (C) of the Attachment G of the RFP, the proposal from Super Nice STS, Inc. listed the following contracts that the proposer or its sub-contractors performed for Miami-Dade County. See pages 1 to 8 under Tab 3-1C of the proposal.*

Client	*Proposal Page #*	*Information received in Response to the County's March 22, 2012 letter*	*Information from Sunbiz.org*
Miami-Dade Transit Department	*Page 2 under Tab 3-1C*	- *Contractor is Advanced Transportation Solutions, LLC (ATS)**	*FEIN of ATS: 651112087*
Miami-Dade Transit Department	*Page 4 under Tab 3-1C*	- *Contractor is Advanced Transportation Solutions, LLC (ATS).* - *Transportation America was the largest service provider company in the contract.*	
Public Health Trust	*Page 6 under Tab 3-1C*	- *Contractor is MCT Express, Inc. d/b/a/ Miami-Dade Ambulance Service.*	*FEIN of MCT Express, Inc.: 651002016*
Miami-Dade County Department of Emergency Management	*Page 8 under Tab 3-1C*	- *Contractor is MCT Express, Inc. d/b/a Miami-Dade Ambulance Service*	*FEIN of MCT Express, Inc.: 651002016*

**Super Nice STS, Inc. is a sub-contractor to ATS and performs approximately 42% of the trips. See page 1 of the proposal.*

Question 3a: *For evaluation purposes under the experience category of the proposer (RFP Attachment G, item # 1A), can the evaluation/selection committee consider the entire contract with ATS or the actual work that is performed by the proposer itself as a sub-contractor.*

Answer 3a: The evaluation/selection committee should only consider the actual work that is performed by the proposer itself as a sub-contractor. In evaluating Super Nice STS, Inc. under the category of proposer's experience, for the existing contract for Special Transportation Services with the County, the evaluation/selection committee should only consider those portions of the contract performed by Super Nice STS, Inc.

Question 3b: *Can the evaluation/selection committee consider the above two contracts with MCT Express, Inc. under the experience category of the proposer (RFP Attachment G, item #1A)? Please note that the proposer is a different legal entity than the contractor.*

Answer 3b: No, the evaluation/selection committee cannot consider the contracts referenced in your memorandum under the experience category of the proposer because the legal entities that entered into such contracts were separate and distinct legal entities from the proposer.

Question 3c: *Can the evaluation/selection committee consider the above contracts under the experience category of its key personnel (RFP Attachment G, item # 1E) since Mr. Raymond Gonzalez is the owner of companies listed above.*

Answer 3c: Yes, the evaluation/selection committee can consider performance under the contracts referenced in your memorandum under the experience category of its key personnel to the extent that the evaluation/selection committee determines that such "key personnel" performed in the other contract(s).

iv. *In response to item 1 (A) of the Attachment G of the RFP, the proposal from Super Nice STS, Inc. listed multiple contracts with their dollar values. The March 22, 2012 letter issued by the County requested proof of all contracts from proposers. The information provided by Super Nice STS, Inc. in response to this letter does not validate the dollar values of the contracts.*

Question 4: *Please advise how the evaluation/selection committee should evaluate this information.*

Answer 4: Super Nice STS, Inc.'s proposal includes a list of multiple contracts for transportation services provided by Super Nice STS, Inc., including the name of the entity contracting with Super Nice STS, Inc., as well as the dollar amount of such contracts. Your March 22, 2012 letter requested verification of all such contracts and their dollar amounts from both proposers. The procurement officer may request such information from the proposers to assist the selection/evaluation committee. The officer may also notify the proposers that if such information is not provided by a date certain, then the selection/evaluation committee may be instructed that such information had previously been requested of the proposers and to the extent that the information is not provided, the committee members are free to adjust their evaluations accordingly.

(B) ***Issues related to the proposal from First Transit, Inc.***

Question 5: *To evaluate the financial capability (Attachment G, item 2A) of First Transit, Inc. can the evaluation/selection committee consider the financial resources of FirstGroup America. Inc. (parent company of First Transit, Inc.) or just the financial resources of First Transit, Inc. See page 26 of attachment 3 of the proposal submitted.*

Answer 5: The selection/evaluation committee may only evaluate the financial capability of First Transit, Inc. First Transit, Inc. is the sole proposer and its proposal does not contain any indication that the parent company, FirstGroup America, Inc., is financially backing or otherwise guaranteeing this proposal.

Question 6: *First Transit, Inc. proposed the following sub-contractors in their proposal: Handi-Van. Inc.; Zuni Transportation, Inc.; ProMed Transportation Corporation; and Terrell Industries, Inc. The information regarding sub-contractors is consistent in the forms submitted by the proposer. Page 140 of the proposal includes a statement regarding introduction of a*

new provider "Maruti Fleet and Management". Please advise how the evaluation/selection committee should consider this information.

Answer 6: The selection/evaluation committee shall only evaluate the subcontractors listed on the appropriate forms submitted by the proposer. Specifically, Form A-5 (Subcontractor / Supplier Listing) is mandatory and requires a listing of all subcontractors. Pursuant to the language of the form and consistent with Ordinance No. 97-104, "[a] bidder or proposer who is awarded the contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified except upon the written approval of the County." Accordingly, Maruti Fleet and Management should not be considered as part of this proposal.

Question 7: *In response to item 1 (A) of the Attachment G of the RFP, the proposal from First Transit Inc. listed multiple contracts. However, First Transit, Inc. did not include dollar values of these contracts in its proposal or in response to the County's March 22, 2012 letter. Since the intent of the March 22 letter was to validate the information already provided in the proposal and not to allow the firms to supplement additional information. The evaluation/selection committee will be advised to evaluate the proposals without this information. Please advise if this approach is consistent with the County policies and procedures.*

Answer 7: First Transit, Inc.'s proposal includes a list of multiple contracts for transportation services provided by First Transit, Inc., including the name of the entity contracting with First Transit, Inc., as well as the dollar amount of such contracts. Your March 22, 2012 letter requested verification of all such contracts and their dollar amounts from both proposers. The procurement officer may request such information from the proposers to assist the selection/evaluation committee. The officer may also notify the proposers that if such information is not provided by a date certain, then the selection/evaluation committee may be instructed that such information had previously been requested of the proposers and to the extent that the information is not provided, the committee members are free to adjust their evaluations accordingly.

(C) ***Issues Raised in Fred Simmons's May 18, 2012 Correspondence***

Question: *Please review the DBE Certification of Assurance for RFP No. 800 provided, and the manner in which they are filled out, and advise if this impacts the responsiveness of either Proposer.*

Answer: The purpose of this Certification of Assurance is to provide the County with a commitment from the proposer to meet the DBE goal provided in RFP No. 800. In this case, the RFP included a minimum DBE participation goal of 12 percent of the total price of the contract. See RFP No. 800, Attachment J. "A proposal that fails to include the Certification of Assurance . . . may be deemed non-responsive." *Id.* To the extent that there is a responsibility determination, that determination is that the proposer includes a Certification of Assurance committing to meeting the DBE goal. In reviewing the submissions of First Transit, Inc., and Super Nice STS, Inc. d/b/a Transportation America, both parties have submitted Certifications of Assurance for the subject RFP in which they have, respectively, committed to meeting the

DBE goal. Accordingly, neither proposal can be deemed non-responsive for failing to provide a Certification of Assurance.

In addition to submitting signed Certifications of Assurance for the prime contractors, both proposals included an executed Form A-5 (Subcontractor/Supplier Listing), both proposals included at least one DBE business on their respective listings, and both proposals included executed Prime and Subcontractor Information forms from the prime contractor and all subcontractors listed on their respective Forms A-5.

First Transit, Inc. also included signed Certifications of Assurance from its subcontractors, including its listed DBE subcontractors, while Super Nice STS, Inc. d/b/a Transportation America did not include such certifications from its subcontractors. To the extent one were to allege that either proposer filled out the Certification of Assurance form in an incorrect manner, the use of "may" in the above-referenced RFP language is permissive as opposed to mandatory. The inclusion (or lack of inclusion) of a Certification of Assurance form from a subcontractor cannot form the basis of a responsiveness determination, as the only assurance sought by the County is that of the prime contractor. Additionally, the Certification of Assurance form is part of a federally-approved plan that allows the issue to be one of responsibility as opposed to responsiveness. As such, it is not required, even if the Certificate of Assurance was improperly filled out, to deem either proposal non-responsive.

Moreover, while the Assurance Form provided included space to indicate how much work would be performed by the DBE(s), the amount of work to be performed by each DBE is only required in the solicitation to be provided two days prior to negotiations and is thus a condition of award, not a condition of responsiveness. See RFP No. 800, Attachment J (requiring a schedule of participation executed by the prime two days prior to scheduled negotiations or award date). The amount committed to each DBE firm may be changed as long as each DBE firm listed continues to participate and the overall DBE participation meets or exceeds the 12% floor as set forth in the solicitation.

Should you have any other questions, please feel free to contact me.

Alexander S. Bokor FOR
Bruce Libhaber
Assistant County Attorney

c: Alina T. Hudak, County Manager
Lester Sola, Director, Internal Services Department
Miriam Singer, Assistant Director, Internal Services Department
Alexander S. Bokor, Assistant County Attorney
Amos Roundtree, Division Director, Internal Services Department

Memorandum

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

From: Charles Scurr, Executive Director

Date: September 6, 2012

Re: **CITT AGENDA ITEM 5A:**
RESOLUTION BY THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST (CITT) RECOMMENDING THAT THE BOARD OF COUNTY COMMISSIONERS (BCC), AUTHORIZE EXECUTION OF A WAIVER OF FORMAL BID PROCEDURES AND BID PROTEST PROCEDURES PURSUANT TO SECTION 5.03(D) OF THE HOME RULE CHARTER AND SECTIONS 2-8.1 AND 2-8.4 OF THE COUNTY CODE BY TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT IN ORDER TO MODIFY THE CONTRACT FOR PARATRANSIT TRANSPORTATION SERVICES FOR ADDITIONAL TIME AND SPENDING AUTHORITY FOR THE MIAMI-DADE TRANSIT DEPARTMENT (MDT) TO CONTINUE TO PURCHASE DEMAND RESPONSE PARATRANSIT TRANSPORTATION SERVICES IN COMPLIANCE WITH AMERICAN WITH DISABILITIES ACT REGULATIONS IN THE AMOUNT OF $19,980,000 WITH ADVANCED TRANSPORTATION SOLUTIONS, LLC, AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE AN AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ANY CANCELLATION AND RENEWAL PROVISIONS, AND TO EXERCISE ALL OTHER RIGHTS CONTAINED THEREIN, CONTRACT NO. TR04-TSB – SUPPLEMENTAL AGREEMENT NO. 5; AND AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS **(MDT/ISD – BCC Legislative File No. 121684)**

On September 6, 2012, the CITT voted (9-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 12-069. The vote was as follows:

Hon. Linda Zilber, Chairperson – Aye
Paul J. Schwiep, Esq., 1st Vice Chairperson – Absent
Hon. Anna E. Ward, Ph.D., 2nd Vice Chairperson – Aye

Christopher Benjamin, Esq. – Absent
Glenn J. Downing, CFP® – Aye
Alfred J. Holzman – Aye
Miles E. Moss, P.E. – Aye
Marilyn Smith – Absent
Joseph Curbelo – Aye
Peter L. Forrest – Aye
Prakash Kumar – Aye
Hon. James A. Reeder – Aye

cc: Alina Hudak, Deputy Mayor/County Manager
Bruce Libhaber, Assistant County Attorney
Alexander Bokor, Assistant County Attorney

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