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

Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 8(F)(6)

Date: June 3, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Recommendation to Reject all Proposals Received: Oracle's PeopleSoft Enterprise Application Data Archiving Solution

Resolution No. R-503-14

Recommendation

It is recommended that the Board of County Commissioners (Board) approve rejection of all proposals received under *Request for Proposals (RFP) No. 854, Oracle's PeopleSoft Enterprise Application Data Archiving Solution.* This solicitation was issued on behalf of the Information Technology Department (ITD) to purchase and implement a turnkey, county-hosted Data Archiving Solution (Solution) in support of the existing Oracle's PeopleSoft Enterprise Resource Planning (ERP) application.

Proposals were received from IBM Corp. and Dell Marketing, L.P. The proposal submitted by IBM Corp. was deemed non-responsive by the County Attorney's Office due to IBM submitting a price proposal schedule that materially deviated from the solicitation requirements (see attached opinion from the County Attorney's Office). The proposal from Dell Marketing, L.P. is recommended for rejection as it failed to meet the price requirements established by the County, as well as the technical requirements and operational needs of ITD pursuant to the specifications in the solicitation. More specifically, the Evaluation/Selection Committee raised concerns regarding the exclusion of maintenance and support coverage for products by the subcontractor, past experience of the proposer, inconsistencies in the details of the operating systems and hardware components identified, as well as concerns with the implementation approach, recommended project team, response time, and proposed milestones and deliverables schedule.

ITD, along with staff from its client departments, are conducting an analysis to determine changes needed to the technical specifications for the new solicitation.

Scope

The impact of this item would have been countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact of the initial five-year contract term would have been $1,500,000. The solicitation included two, three-year options to renew. The allocation was budgeted as follows:

Department	Allocation	Funding Source	Contract Manager
Information Technology	$ 1,500,000	Internal Service Funds	Edward Beltran
Total	**$ 1,500,000**		

Track Record/Monitor

Josh Brown of the Internal Services Department is the Procurement Contracting Officer.

Vendors Not Recommended for Award

The RFP was issued under full and open competition on October 17, 2013. Award would have been made to the responsive, responsible proposer satisfying the criteria established in the solicitation.

Proposers	Reason for Not Recommending
IBM Corp.	Rejection of proposal
Dell Marketing L.P.	

Applicable Ordinances and Contract Measures

- The User Access Program provision applied and would have been collected on all purchases.
- The Local Preference Ordinance was included in the solicitation.
- A Small Business Enterprise Selection Factor was included in the solicitation.
- The Living Wage Ordinance did not apply.

Edward Marquez
Deputy Mayor

Memorandum

MIAMI-DADE COUNTY

Date: January 8, 2014

To: Josh Brown
Procurement Contracting Officer 2
Procurement Management Services Division / Internal Services Department

From: Eduardo W. Gonzalez
Assistant County Attorney

Subject: Request for Legal Opinion PROJECT No. RFP 854 : TITLE Oracles' PeopleSoft Enterprise Application Data Archiving Solution.

You have asked this office if a proposal IBM Corp. ("IBM") submitted may be considered responsive to the above referenced Request for Proposal (RFP 854) when IBM's Price Proposal Schedule (Form B-1) was from a previous solicitation (RFP 778). For the reasons set forth below, we conclude that IBM's proposal is non-responsive.

FACTS

We rely on the information provided in your December 9, 2013 memorandum, our meeting on the RFP responsiveness issues, the solicitation at issue and IBM's submitted proposal.

On December 6, 2013, proposals were received for RFP 854 and subsequently reviewed for responsiveness. During the review, it was noted that the proposal submission received from IBM for Form B-1, Price Proposal Schedule of the proposal submittal package was from a previous solicitation (RFP 778). RFP 778 was solicited in 2012 for the same project, but all proposals were rejected. The Form B-1, Price Proposal Schedule for RFP 854 was updated and changes were made prior to RFP 854 being advertised on October 17, 2013. IBM did not provide a breakdown of prices for section B1A and B1B separately as requested in RFP 854 (page 32-33 of the solicitation). Additionally, RFP 854 requires proposers to submit a total proposed price for an initial 5-year contract term. IBM, using the Price Schedule for RFP 778, submitted a total proposed price for a 2-year contract term.

DISCUSSION

In general, a proposal may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. See Robinson Elec. Co. v. Dade County, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982). There is a two part test to determine if a specific noncompliance in a proposal constitutes a substantial and thus nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers. See id.

Price is a material element of the solicitation. IBM submitted a price proposal schedule from a previously issued RFP, RFP 778. The price proposal schedule that IBM submitted materially deviates

from the Price Proposal Schedule required under RFP 854. For example, RFP 854 requires proposers to submit a total proposed price for an initial 5-year contract term. IBM, erroneously using the Price Schedule for RFP 778, submitted a total proposed price for a 2-year contract term. Accordingly, IBM's response is nonresponsive due to its failure to provide the Price Proposal Schedule required under RFP 854.

Eduardo W. Gonzalez

Memorandum

MIAMI-DADE COUNTY

Date: December 9, 2013

To: Melissa Adames & Josh Brown
Internal Services Department

From: Eduardo W. Gonzalez
Assistant County Attorney

Subject: Responsiveness of Late Proposal – RFP 854 (Dell, Inc.)

You have asked this office if a late proposal submitted by Dell, Inc. ("Dell") may be considered responsive to the above referenced Request for Proposal when the proposal was received one business day after the proposal deadline. For the reasons set forth below, we conclude that it is within the County's discretion to accept Dell's late proposal.

FACTS

We rely on the information you provided in an email dated December 9, 2013 with attachments.

Responsive proposals were due on December 6, 2013 at 2:00 p.m. Proposals were opened at 2:30 p.m. Based on the information provided to the County by Dell and Federal Express ("FedEx") shipment tracking information, Dell sent FedEx the shipping information for its proposal at 12:11 p.m. on December 5, 2013. Dell's proposal was picked up for shipping at Plano, Texas at 5:13 p.m. on December 5, 2013. Dell selected FedEx's "Priority Overnight Delivery" option for the delivery of its proposal to the County Clerk of the Board. FedEx Priority Overnight® provides next-business-day delivery by 10:30 a.m. Accordingly, if delivered as scheduled, Dell's proposal would have arrived to the County before the 2:00 p.m. December 6, 2013 deadline. Due to FedEx delivery delays likely caused by the weather, FedEx was not able to deliver Dell's proposal to the Clerk until after the proposal deadline. The Clerk received the Dell proposal on December 9, 2013 at 10:02 a.m.

DISCUSSION

Based on the facts set forth above, the County may, in its discretion, consider this late proposal.

In general, a proposal may be rejected or disregarded if there is a material variance between the proposal and the advertisement. A minor variance, however, will not invalidate the proposal. See Robinson Elec. Co. v. Dade County, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982). There is a two part test to determine if a specific noncompliance in a proposal constitutes a substantial and thus nonwaivable issue: (1) whether the effect of the waiver would be to deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) whether it would adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers. See id.

In the past, this office has advised that proposals submitted after the close of business on the due date should be considered presumptively invalid absent an extraordinary showing. However, this office has also advised that the County may accept a proposal if the delay in submitting the proposal was outside of the proposer's control and the proposer had a reasonable expectation that the proposal would be timely delivered. This is such a case. Here, Dell sent the proposal via "FedEx Priority Overnight Delivery" and had a reasonable expectation that the proposal would arrive to the Clerk of the Board before the proposal deadline. The late delivery occurred because of FedEx delivery delays while the proposal was en route to the Clerk's office. Further, there was no opportunity for the proposer to achieve a competitive advantage as their proposal was in the possession of FedEx during the entire delivery process.

Accordingly, it would be lawful for the County to accept this late filed proposal if it concludes that it would not adversely affect the competitive bidding process because of the time it was submitted. This determination is fully consistent with previous advice from this office and case law regarding late filed bids. See, e.g., Air Support Servs. Int'l Inc. v. Dade County, 614 So.2d 583 (Fla. 3d DCA 1993); Hewitt Contracting Co., Inc. v. Melbourne Regional Airport Authority, 528 So.2d 122 (Fla. 5th DCA 1988).

Eduardo W. Gonzalez

IMPORTANT!
A winter storm is causing delays and disruptions across the U.S. Learn More

FedEx

797320872161

Ship (P/U) date :
Thur 12/05/2013 6:13 pm
Plano, TX US

In transit
On FedEx vehicle for delivery
MIAMI, FL

Estimated delivery :
N/A
MIAMI, FL US

Let us tell you when your shipment arrives. Sign up for delivery notifications »

Travel History

Date/Time	Activity	Location
- 12/09/2013 - Monday		
8:21 am	On FedEx vehicle for delivery	MIAMI, FL
7:53 am	At local FedEx facility	MIAMI, FL
- 12/08/2013 - Sunday		
11:28 pm	Departed FedEx location	MEMPHIS, TN
9:49 pm	In transit	MEMPHIS, TN
- 12/07/2013 - Saturday		
4:47 am	Arrived at FedEx location	MEMPHIS, TN
- 12/06/2013 - Friday		
8:48 pm	In transit	INDIANAPOLIS, IN
8:48 pm	Departed FedEx location	INDIANAPOLIS, IN
6:22 am	In transit	INDIANAPOLIS, IN
6:09 am	In transit	INDIANAPOLIS, IN
2:12 am	Shipment exception Delay beyond our control	DALLAS, TX
2:39 am	Arrived at FedEx location	INDIANAPOLIS, IN
- 12/05/2013 - Thursday		
8:30 pm	Left FedEx origin facility	PLANO, TX
5:13 pm	Picked up	PLANO, TX
12:11 pm	Shipment information sent to FedEx	

Local Scan Time

Shipment Facts

Tracking number	797320872161	Service	FedEx Priority Overnight
Weight	30 lbs	Dimensions	24x13x12 in.
Total pieces	1	Total shipment weight	30 lbs / 13.6 kgs
Shipper reference	SALES14250_DEFAULT_MIAMIDADE	Packaging	Your Packaging
Special handling section	Deliver Weekday		

MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: June 3, 2014

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

SUBJECT: Agenda Item No. 8(F)(6)

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 Mayor'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(F)(6)
6-3-14

RESOLUTION NO. R-503-14

RESOLUTION AUTHORIZING THE REJECTION OF ALL PROPOSALS RECEIVED IN RESPONSE TO REQUEST FOR PROPOSALS RFP 854 FOR ORACLE'S PEOPLESOFT ENTERPRISE APPLICATION DATA ARCHIVING SOLUTION FOR THE INFORMATION TECHNOLOGY DEPARTMENT

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 rejection of all proposals received in response Request for Proposals 854 for Oracle's PeopleSoft Enterprise Application Data Archiving Solution.

The foregoing resolution was offered by Commissioner **Lynda Bell**, who moved its adoption. The motion was seconded by Commissioner **Jean Monestime** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of June, 2014. 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: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Eduardo W. Gonzalez