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

Memorandum

MIAMI-DADE COUNTY

Date: May 17, 2016

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

Agenda Item No. 8(F)(16)

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Approval to Award: Aqueous Ammonia

Resolution No. R-383-16

Recommendation

It is recommended that the Board of County Commissioners (Board) approve award of *Contract No. FB-00301*, *Aqueous Ammonia*, for the purchase and delivery of aqueous ammonia for the Miami-Dade Water and Sewer Department to be used in the water treatment process. The recommended vendor, Airgas Specialty Products, Inc. (Airgas), will deliver aqueous ammonia in tanker truck loads to the Alexander Orr Jr. Water, John E. Preston Water, and the Hialeah Water Treatment Plants.

Scope

The impact of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the two-year term is $1,341,000. If the County chooses to exercise the one (1), two-year option-to-renew term, the contract's cumulative value will be $2,682,000. The fiscal impact for the initial contract term and the option-to-renew term is based on the estimated usage at the price per pound.

The current contract, *FB-00075*, is valued at $999,000 for five (5) years and scheduled to expire on November 30, 2019. The user department, Water and Sewer, has elected to cancel the current contract and recommends awarding this replacement contract in order to obtain better pricing. The allocation under the recommended contract is higher than the current contract due to an increase in estimated quantities of aqueous ammonia.

Department	Allocation	Funding Source	Contract Manager
Water and Sewer	$ 1,341,000	Proprietary Funds	Susan Pascul
Total:	**$ 1,341,000**		

Track Record/Monitor

Herman Ramsey of the Internal Services Department is the Procurement Contracting Officer.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise all provisions of the contract pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

An Invitation to Bid was issued under full and open competition on November 4, 2015. Three (3) vendors responded to the solicitation, one (1) of which was a "No Bid." The method of award was to the single lowest-priced responsive and responsible bidder that met the solicitation's minimum qualifications.

Awardee	Principal Address	Address of Branch Offices or Headquarters in Miami-Dade or Broward*	Number of Employee Residents 1)Miami-Dade 2)Broward 3)Percentage*	Principal
Airgas Specialty Products, Inc.	2530 Sever Road Suite 300 Lawrenceville, GA	None	None None None	Thomas M. Smyth

*The information in this table is being provided pursuant to Resolution No. R-1011-15. The percentage of employee residents is the percentage of the vendors' employees who reside in Miami-Dade or Broward County as compared to the vendor's total workforce.

Vendors Not Recommended for Award

Vendor	Reason for Not Recommending
Tanner Industries, Inc.	Deemed non-responsive by the County Attorney's Office (CAO) for taking exceptions to the solicitation's General Terms and Conditions. See attached CAO opinion.
Harcros Chemicals, Inc.	No Bid*

*A "No Bid" means the vendor responded indicating it will not be providing an offer.

Due Diligence

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

Pursuant to Resolution No. R-140-15, prior to the re-procurement of this replacement contract, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comments, and holding meetings and drafting sessions with the user department. The solicitation was updated to revise the unit of measure from tons to pounds as well as to increase the estimated annual quantity.

Applicable Ordinances and Contract Measures

- The two (2) percent User Access Program provision applies and will be collected on all purchases.
- The Small Business Enterprise Bid Preference and Local Preference were applied in accordance with the ordinances.
- The Living Wage Ordinance does not apply.

Jack Osterholt
Deputy Mayor

Memorandum

MIAMI-DADE COUNTY

Date: December 8, 2015

To: Herman Ramsey
Procurement Contracting Officer
Internal Services Department

From: Henry N. Gillman
Assistant County Attorney

Subject: Responsiveness Determination on ITB No. FB-00301: Aqueous Ammonia

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You have asked this office if a bid from Tanner Industries, Inc. may be considered responsive to the above-referenced Invitation to Bid ("ITB"). For the reasons set forth below, we conclude that Tanner's bid is nonresponsive to the ITB and should be rejected by the Internal Services Department.

FACTS

We rely on information provided in your memorandum to this office dated November 18, 2015 and attached hereto. Specifically, you informed us that Tanner has amended, modified, and crossed out certain sections of the General Terms and Conditions as follows: Section 1.8, Tanner crossed out "Materials shall be new and warranted against Defects" and the word "new" in the section; Section 1.21 "Indemnification", Tanner amended the section by crossing out the County's language and inserting its own language; Section 1.47, "First Source Hiring Referral Program", Tanner crossed out the entire section. I also observed that in Section 1.26, Termination for Default", Tanner crossed out "All re-procurement cost shall be borne by the successful bidder." The General Terms and Conditions in the Solicitation Document provide that "these general terms and conditions are considered non-negotiable".

DISCUSSION

Based on the facts set forth above, ITD may not consider Tanner's bid as responsive to the ITB. In general, a proposal may be rejected or disregarded if there is a variance between the proposal and the advertisement. *See Robinson Electric Co. v. Dade County*, 417 So. 2d 1031, 1034 (Fla. 3rd DCA 1982). Only when a variance is immaterial or "minor" is a bidder permitted to withdraw the variance. *Harry Pepper & Associates, Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1129 (Fla. 2d DCA 1977 ("a bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities"). Bidders who propose impermissible exceptions to invitations to bid do so at the risk of those exceptions being deemed material to the proposal and having their bid rejected as nonresponsive.

The determination of whether a variance or irregularity is minor is fact specific and may differ from bid to bid. Florida courts have used 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 the competitive bidding by placing a proposer in a position of advantage over other proposers. *See Glatstein v City of Miami*, 399 So. 2d 1005 (Fla 3d DCA), rev. denied, 407 So. 2d 1102 (Fla. 1981). For price bids, if the irregularity has a clear and demonstrable effect on the amount of the bid, it is a material deviation that cannot be waived. *See Harry Pepper*, 352 So. 2d at 1193 ("the test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive nature is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by other bidders").

In some cases, however, irregularities that are tangential to the actual bid may not be considered material if they do not adversely affect the interests of the County. *See Tropabest Foods, Inc. v. State Dept of General Services*, 493 So. 2d. 50, 52 (citing the Florida Administrative Code's provisions that a minor irregularity is one which "does not affect the price of the bid, or give the bidder an advantage or benefit not enjoyed by other bidders or does not adversely impact the interests of the agency").

Here, Tanner's bid is a substantial departure from the ITB as Tanner's bid contains its own terms regarding warranty, liability and other terms integral to the ITB. Tanner in essence submitted a bid based on its own terms and conditions and not the terms and conditions required of all other bidders. Tanner may not now, after all the bids are opened, decide whether it wants the job badly enough to accept the County's terms and conditions and abandon their own. As such, Tanner's bid is nonresponsive.

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: May 17, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(F)(16)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Statement of social equity required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 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)(16)
5-17-16

RESOLUTION NO. R-383-16

RESOLUTION APPROVING AWARD OF CONTRACT NO. FB-00301 FOR PURCHASE OF AQUEOUS AMMONIA FOR THE WATER AND SEWER DEPARTMENT IN A TOTAL AMOUNT NOT TO EXCEED $2,682,000.00 OVER THE INITIAL TWO-YEAR TERM AND THE ONE, TWO-YEAR OPTION TO RENEW; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD, ISSUE THE APPROPRIATE PURCHASE ORDER TO GIVE EFFECT TO SAME AND EXERCISE ALL PROVISIONS OF THE CONTRACT PURSUANT TO SECTION 2-8.1 OF THE CODE AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves award of Contract No. FB-00301 for purchase of aqueous ammonia for the Water and Sewer Department as set forth in the incorporated memorandum in a total amount not to exceed $2,682,000.00 over the initial two-year term and the one, two-year option to renew period; and authorizes the County Mayor or County Mayor's designee to give notice of this award, issue the appropriate purchase order to give effect to same and exercise all provisions of the contract pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38. A copy of the contract is on file with and available upon request from the Internal Services Department, Procurement Management Services Division.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of May, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman