



**OFFICE OF THE COMMISSION AUDITOR
MIAMI-DADE BOARD OF COUNTY COMMISSIONERS**

**COMMISSION AUDITOR'S
INFORMATIONAL RESEARCH**

CHAIRWOMAN'S POLICY COUNCIL MEETING

September 10, 2020

12:00 P.M.

Virtual Meeting

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Commission Auditor

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File No. 201261**

Researcher: MF Reviewer: PGE

RESOLUTION RETROACTIVELY AUTHORIZING A DESIGNATED PURCHASE PURSUANT TO SECTION 2-8.1(B)(3) OF THE COUNTY CODE BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT; AUTHORIZING AWARD OF ADDITIONAL TIME UP TO SEVEN-MONTHS AND ADDITIONAL EXPENDITURE AUTHORITY FOR CONTRACT NO. MDAD-02-06 IN AN AMOUNT UP TO \$87,500.00 UNDER THE SAME TERMS AND CONDITIONS FOR THE PURCHASE OF OPERATION OF PUBLIC PARKING FACILITIES – MIAMI INTERNATIONAL AIRPORT FOR THE MIAMI-DADE AVIATION DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE COUNTY CODE AND IMPLEMENTING ORDER 3-38

ISSUE/REQUESTED ACTION

Whether the Board should approve, retroactively, by a two-thirds vote of the members present, a designated purchase consisting of additional time and expenditure authority for *Contract No. MDAD-02-06* for the purchase of operation of public parking facilities services in the amount of up to \$87,500 for a term of seven months for the Aviation Department.

PROCEDURAL HISTORY

Prime Sponsor: None

Department/Requester: Internal Services Department

Associated items Legistar Nos. 191352 and 200259 (Recommendation to Award Contract to LAZ Florida Parking) were heard at the August 31, 2020 BCC meeting. Ultimately, the Board, by a two-thirds vote, rejected awarding the contract to LAZ and instead approved awarding the contract to incumbent APA Parking Associates (APA).

Below is a synopsis of the discussion that transpired at the August 31, 2020 BCC meeting.

- Commissioner Sally Heyman expressed her concern with the contract taking so long and seeing the two Best and Final Offers (BAFOs) issued under this solicitation. She pointed to the Office of the Inspector General’s (OIG) report, citing confusion with the procurement process.
- MDAD Director Lester Sola clarified the reason the contract went out was because it was coming to an end and a new solicitation was needed. The recommendation was based on the BAFO.
- Commissioner Jose “Pepe” Diaz concurred with Commissioner Heyman, adding it is important to consider local vendors and the most qualified. He expressed concern with the past litigation history of the recommended firm, LAZ Florida Parking.
- In response to Commissioner Diaz’s inquiry pertaining the history of the incumbent firm, APA Parking Associates, Mr. Sola confirmed the County has not had any issues with the incumbent; the reason the incumbent was not selected was because the bid was higher.
- Commissioner Joe Martinez sought clarity in the contract specifics pertaining to financial opportunities for the awarded firm, to which Mr. Sola stated the selected company has the ability to offer products and other related services (such as car wash) for sale.

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- Commissioner Daniella Levine Cava requested clarification as to the reasons why this item has become a concerning issue. In response, ISD Procurement Chief Namita Uppal summarized the history of the item for the past year.
- Commissioner Rebeca Sosa said it is important to follow process and pointed to the Hearing Examiner's findings, which did not find any flaws in the procurement process.
- Chairwoman Audrey Edmonson pointed to previous litigation pertaining LAZ – to which Ms. Uppal acknowledged said litigation.
- Commissioner Esteban Bovo said when the process is not followed and certain companies involve commissioners, these types of issues arise.
- Commissioner Barbara Jordan referred to the OIG's report, which called the reimbursement language in the BAFO solicitation "unvetted" and therefore should have not been incorporated in the RFP to begin with.
- Commissioner Dennis Moss pointed to a news article from Massachusetts discussing a lawsuit involving LAZ Parking, LTD., to which Ms. Uppal indicated the litigation in question referred to sister companies of LAZ.
- Commissioner Eileen Higgins said it was important to keep the local workforce employed and she had heard good feedback regarding incumbent company APA. The other concern is having to switch the County over to a new system (should the award go to LAZ) – resulting in a costly venture.
- Commissioner Jean Monestime inquired of ISD the exact break point of recommending one vendor over the other. In response, Ms. Uppal said the recommendation was based on both qualifications and the management fee. Mr. Sola also corroborated that incumbent (APA) has not has any issues at MIA since the company first commenced parking operations at MIA in 2008.
- Commissioner Heyman made a motion to reject award to LAZ Florida Parking, to which Commissioner Barbara Jordan seconded.
- Commissioner Sosa suggested extending the current contract (under APA) until a new procurement process is conducted again.
- Commissioner Bovo said he disagreed with rejecting the award and pointed to the amount of time this item has taken.
- Commissioner Diaz underscored his concern with the litigation history of LAZ.
- Commissioner Heyman amended the motion to reject the award to LAZ and, instead, award the contract to APA, based on the firm's history and qualifications.
- The motion passed 8-3.

ANALYSIS

The purpose of this item is to gain Board authorization for a retroactive contract extension, extending the contract with APA by seven months, from April 1, 2020 to October 31 2020 to ensure uninterrupted service delivery while the Aviation Department (MDAD) transitions to the new APA contract. The fiscal impact of the designated purchase is a maximum of \$87,500 for the seven-month term.

The County's initial agreement with APA dates to September 2008 via Resolution No. 898-08, through which the Board approved APA's contract for a five-year term with five one-year options to renew for a monthly management fee of \$8,250 – or \$99,000 per year. Subsequently to the 2008 agreement, the Board approved a one-year contract extension through Resolution No. 979-18, thereby increasing the monthly management fee from \$8,250 to \$12,500 and allowing a one-time payment of \$49,699 for five years. After accounting for a Consumer Price Index (CPI) adjustment, the cumulative total for the one-time payment totaled \$199,699. Thereafter, under the Mayor's delegated

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authority, the County granted APA a contract extension and associated expenditure for a six-month period in the amount of \$75,000 – or \$12,500 per month – which expired March 31, 2020.

Table 1 below provides a breakdown of the amounts paid to APA since the contract's inception.

Table 1

CONTRACT NO. MDAD-02-06	
Term	Contract Fees
9/2008 – 9/2009	\$99,000
10/2009 – 9/2010	\$99,000
10/2010 – 9/2011	\$99,000
10/2011 – 9/2012	\$99,000
10/2012 – 9/2013	\$99,000
10/2013 – 9/2014	\$99,000
10/2014 – 9/2015	\$99,000
10/2015 – 9/2016	\$99,000
10/2016 – 9/2017	\$99,000
10/2017 – 9/2018	\$99,000
10/2018 – 9/2019	\$199,699*
10/2019 – 3/2020	\$75,000
3/2020-10/2020	\$85,500
TOTAL	\$1,350,199

**Per ISD, included is \$150,000 management fee and one-time payment for historic CPI adjustments*

Table 2 below shows the annual management fee under the existing APA contract and the management fee under the replacement, retroactive APA contract for the specified terms.

Table 2

CONTRACT NO. MDAD-02-06	
Existing Management Fee & Term	Replacement Management Fee & Term
\$75,000 10/2019 – 3/2020 (6-month term)	\$87,500 04/1/2020 – 10/2020 (7-month term)

Approval of this item is for a six-month retroactive designated purchase and time extension between the County and APA under Supplemental Agreement No. 2 with a fixed monthly management fee of \$12,500 for a six-month term spanning April 1, 2020 through September 30, 2020. Additionally, a one-month designated purchase and time extension under Supplemental Agreement No. 3 will be in effect with a fixed monthly management fee of \$12,500 from October 1, 2020 through October 31, 2020.

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OCA performed due diligence on the awarded vendor, APA Parking Associates (corporate name: Central Parking System of Florida, Inc.), on September 7, 2020; below are the findings.

Awarded Firm(s)	Corporate Registration	Tax Collector's Office	Florida DBPR	Westlaw
Central Parking System of Florida, Inc. dba APA Parking Associates	Foreign Profit Corporation Inactive Principal Address: 200 E. Randolph St. #7700 Chicago, IL Filed: December 30, 1983	Inactive Account from 2019 paid & closed	No account on file	<i>Chicas v. Central Parking System of Florida, Inc.</i> Case No. 1:14-CV-21459 filed April 23, 2014 in the U.S. District Court, Southern District of Florida (Miami). Allegation: Class action suit alleging Defendant failed to pay minimum wages under the Fair Labor Standards Act. Case status: A settlement was reached June 2014. <i>Arroyo v. Central Parking System of Florida, Inc.</i> Case No. 1:12-CV-21331, 21459 filed April 7, 2012 in the U.S. District Court, Southern District of Florida (Miami). Allegation: Class action suit alleging the Defendant failed to pay employee and other members overtime wages under the Fair Labor Standards Act. Case status: Settlement was reached in September 2012.

ADDITIONAL INFORMATION

Based on information found on Central Parking System's website, the company operates parking facilities across the United States, including Miami, New York, Boston, Philadelphia, Houston and Los Angeles, among others. The company operates facilities across various sectors: airport, healthcare, events and venues, office, municipal, hospitality, retail, residential and universities. <https://www.spplus.com/>

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APPLICABLE LEGISLATION/POLICY

Section 2-8.1 of the Code of Miami-Dade County (Contracts and Purchases Generally) applies to all contracts for public improvements and purchases of all supplies, materials and services other than professional services and (1) requires formal sealed bids for purchases over \$250,000.00; (2) describes the circumstances under which non-competitive purchases may be approved; (3) establishes requirements for legacy purchases, designated purchases, and single vehicle leases; and (4) provides that procurement procedures shall be established by Implementing Order (I.O.) and approved by the Board.

[https://library.municode.com/fl/miami -
dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE](https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTIINGE_S2-8.1COPUGE)

Section 2-8.1(b)(3) of the Code of Miami-Dade County (Procedures for purchases when competitive procedures are not practicable) Notwithstanding the requirements of section 2-8.1(b)(1), formal sealed bids for purchase of goods or services shall not be required where such formal sealed bids would not be practicable as set forth herein. Designated Purchase shall mean a purchase within the scope of this section when the purchase through the use of formal sealed bids is not practicable, including, but not limited to: (i) sole source purchases, (ii) services where no competition exists such as public utility services, (iii) where purchases or rates are fixed by law or ordinance, (iv) unique professional or artistic services not governed by the Consultants' Competitive Negotiations Act, section 287.055, Florida Statutes, (v) purchases of goods and services necessary to address an emergency, or where additional formal competition would not be practicable, and (vi) solicitations where only a single proposer has responded to a competitive solicitation but such response contains material defects and the County still desires to enter into a contract with such proposer. Any recommendation by the Mayor for the award of a Designated Purchase shall at a minimum: (i) provide a written explanation of why the purchase through formal sealed bids would not be practicable under the circumstances and is in the best interest of the County, (ii) provide a written explanation of the process followed resulting in the recommendation for a Designated Purchase, and (iii) provide a written description of any informal competition conducted and any and all efforts to obtain a valuation of the recommended purchase. The Board of County Commissioners shall adopt any resolution authorizing a Designated Purchase by a two-thirds vote of the members present.

Resolution No. R-828-19, adopted July 23, 2019, established a County policy for disclosure of past and present discrimination lawsuits in solicitation submissions; requiring the following: 1) implementing a policy of disclosure of discrimination lawsuits; 2) requiring in competitive and non-competitive solicitation documents the disclosure of lawsuits that include allegations of discrimination and dispositions of such lawsuits for a 10-year period through the date of the solicitation or non-competitive award recommendation; and 3) provide a report to the Board.

<http://www.miamidade.gov/govaction/matter.asp?matter=190936&file=true&fileAnalysis=false&yearFolder=Y2019>

Resolution No. R-818-18, adopted July 24, 2018, directed the Mayor or his designee, to negotiate Change Order No. 1 to the non-exclusive management agreement with Airport Parking Associates for the operation of the public parking facilities at MIA to extend the contract term for one year, require payment of an industry standard management fee during the extension and provide for a terminate for convenience clause and to present a written recommendation as to such change order to the Board within 30 days.

<http://intra/gia/matter.asp?matter=181512&file=true&yearFolder=Y2018>

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Resolution No. 979-18, adopted October 2, 2018, retroactively approved Amendment 1 to Contract No. MDAD-02-06 for the designated purchase of non-exclusive management services for the operation of the public parking facilities at MIA for the Aviation Department, providing additional time of up to one year, additional expenditure authority in an amount up to \$199,699 and incorporating additional contract provisions for termination for convenience and public records, pursuant to Section 2-8.1(B)(3) of the County Code, by a two-thirds vote on the Board members present.

<http://intra/gia/matter.asp?matter=182313&file=true&yearFolder=Y2018>

Resolution No. R-898-08, adopted September 2, 2008, authorized the award and execution of non-exclusive management agreement for the operation and public parking facilities at MIA to Airport Parking Associates for a five-year period.

<http://intra/gia/matter.asp?matter=082340&file=true&yearFolder=Y2008>

Resolution No. R-187-12, adopted on February 21, 2012, directs the County Mayor to include due diligence information in memoranda recommending certain contract awards.

<http://intra/gia/legistarfiles/MinMatters/Y2012/120287min.pdf>

Resolution No. R-716-12, adopted on September 4, 2012, requires identification of a firm's Small Business Enterprise (SBE) program certification in any procurement item submitted for Board approval.

<http://intra/gia/matter.asp?matter=121265&file=true&yearFolder=Y2012>

Implementing Order No. 3-38 sets forth the County's processes and procedures for the purchase of goods and services. The I.O. outlines: the roles and responsibilities of the Internal Services Department (ISD); the methods of purchasing goods and services; the authority to award and modify contracts; and the requirements for access contracts, emergency purchases, bid waivers, confirmation purchases and sole sources.

<http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/IO3-38.pdf>

CONTRIBUTORS

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The Office of the Commission Auditor, Miami-Dade Board of County Commissioners

The Office of the Commission Auditor (OCA) was established in September 2002 by Ordinance 03-2 to provide support and professional analysis of the policy, service, budgetary and operational issues before the Miami-Dade Board of County Commissioners. The Commission Auditor's duties include reporting to the Board of County Commissioners on the fiscal operations of County departments, as well as whether the fiscal and legislative policy directions of the Commission are being efficiently and effectively implemented

These research notes, prepared in collaboration with the Miami Dade County departments as subject matter experts, is substantially less detailed in scope than an audit in accordance with the Generally Accepted Auditing Standards (GAAS). The OCA plans and performs the review to obtain sufficient, appropriate evidence to provide a reasonable basis for its findings and conclusions based on its objectives; accordingly, the OCA does not express an opinion on the data gathered by the subject matter expert(s).