

Memorandum



Date: May 7, 2024

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Supplement to
Agenda Item No. 8(N)(7)

Subject: Supplemental Information to Request for Approval of Contract Amendment: Contract No. RFP-00456: Battery-Electric Buses and Charging System and Ratification of a Confirmation Purchase for a One-Time Economic Price Adjustment to the Contract

This supplement is being presented to the Board of County Commissioners (the "Board") to provide additional information pertaining to the request for approval of the contract amendment to Contract No. RFP-00456: Battery-Electric Buses and Charging System and ratification of a confirmation purchase for a one-time economic price adjustment to the contract. The item provides for the approval of a contract amendment and the authority to execute a Supplemental Agreement to effectuate the outlined changes. Additionally, it includes the ratification of an economic adjustment to the Contract that was done in a manner inconsistent with the contract terms. Without the Supplemental Agreement, the County will lose all warranty coverage for the battery-electric fleet, including parts and services. The fleet has been prone to mechanical issues, with a significant number of buses out of service requiring parts and repairs. Accordingly, this item is critical to operations as it provides warranty parts and repairs for the battery-electric bus fleet to allow the County to develop the in-house expertise to complete repairs and establish sources of supply for parts to service the vehicles after the expiration of the warranty.

Subsequent to my approval of the item, the Office of the Inspector General (the "OIG") shared its draft report on the subject contract. This supplement includes information and actions taken to address concerns raised in the OIG's Draft Contract Oversight Report – RFP-00456 Battery-Electric Buses and Charging System – Ref. IG23-00007-0 issued on March 29, 2024. In that report, the OIG recommends that this contract amendment be approved in order to ensure the investment made to date is protected.

Background

The original recommendation to award the Battery-Electric Bus and Charging System contract to Proterra was issued by the then Administration on June 28, 2019, and, following a protest process, was approved by the Board on October 3, 2019. As noted in the OIG report, the change of administration, COVID pandemic and other issues resulted in delays in the implementation of the project and some confusion related to pricing and dates. The contract commenced in October 2019 and the vendor struggled to deliver the products on time and in accordance with the contract and ultimately, the Proterra, Inc. (the vendor) filed for Chapter 11 bankruptcy.

Upon notification of Proterra, Inc.'s ("Proterra") Chapter 11 bankruptcy filing on August 7, 2023, staff with the support of the County Attorney's Office ("CAO"), engaged Proterra to determine the future course of action related to the Contract. Proterra initially indicated a desire to minimally impact customers while undertaking business restructuring under the bankruptcy proceedings. Subsequently, Proterra opted to proceed with a sale of its assets in multiple parts, including its electric bus contracts. The status of Proterra's electric bus contracts, including its contract with the County, remained unknown during the sale process. In January 2024, the sale of Proterra's assets to Phoenix Motor, Inc. ("Phoenix") was finalized by the bankruptcy court. The County engaged Phoenix following the sale to determine whether it intended to assume or reject the County's contract.

Initial conversations indicated a willingness to continue the contractual relationship. However, following an analysis of financial impacts, on February 20, 2024, The Department of Transportation and Public Works ("DTPW") was notified that Phoenix was proceeding with a court filing to reject the County's contract. Rejection would result in the termination of the contract, including all warranties thereunder. In an effort to salvage some warranty coverage and prevent the outright rejection of the contract, an extensive negotiation effort was undertaken by staff with the support of the CAO. The initial position proposed by Phoenix included the removal of the battery charger warranty in its entirety, the removal of all remaining onsite training obligations, the removal of onsite dedicated support resources, and the reduction of all warranties to standard coverages with a start date of February 1, 2024. With the knowledge that Proterra's motion to reject had already been accepted by the bankruptcy court, the County's negotiation position was less than optimal. Despite this, staff was able to achieve an amendment that provides a three-year battery warranty, retains the onsite training obligations, retains the onsite dedicated resources, and provides for a warranty start date of May 1, 2024, for all other coverages. DTPW has experienced significant performance issues with the fleet, making these warranty coverages all the more critical. It is important to note that if the Supplemental Agreement is not approved, the contract will be deemed rejected in the bankruptcy process, which will result in the termination of all warranties. Phoenix is prepared to move forward with the rejection if Board approval is not achieved on or before May 7, 2024.

OIG Findings

The OIG report includes multiple findings with regards to the actions taken by DTPW staff under this contract. The key finding is payment by DTPW in the amount of \$5,150,046.66 based on calculations of the pricing adjustment in a manner that was not allowable under the Contract. This prior action taken by staff is now being presented as a ratification of a confirmation (unauthorized) purchase for the one-time economic adjustment. The total amount to be ratified is \$5,150,046.66, or roughly 7.1% of the contract value. This amount is spread over the cost of 69 battery-electric buses and 75 charging units as follows:

Description	Quantity	Overage Amount per Unit	Total Amount
Battery-electric bus	1	\$97,524.52	\$97,524.52
Battery-electric bus	32	\$91,106.90	\$2,915,420.80
Battery-electric bus	34	\$47,304.45	\$1,608,351.30
Battery-electric bus	2	\$0.00	\$0.00
Chargers	33	\$10,584.02	\$349,272.66
Chargers	38	\$4,697.45	\$178,503.10
Chargers	4	\$243.57	\$974.28
Total			\$5,150,046.66

Additionally, the OIG also found that certain contract actions were not documented appropriately, staff released internal County documents to the vendor, and it appears that staff revised purchase orders due to the urgency expressed by the vendor. The administration takes such actions very seriously. To ensure that future actions do not occur, the DTPW's management team has received explicit communication from the Strategic Procurement Department, which was unaware of the errors made by DTPW at the time, regarding appropriate contracting and procurement processes. The administration continues to look into this matter and is using the information provided by the OIG to address the issues reported.

Timeline

Further, to clarify the timeline for submission of this item for Board approval, in late February 2023 and March 2023, following a transition in staff, DTPW began review of the Proterra purchases above and processed a request for additional spending authority under the Mayor's delegated authority in a manner consistent with the provisions of the contract to complete the purchase of two additional buses and chargers. The complexity of the pricing structure, and the need for the new management to track the

origins of the unauthorized price adjustments, as noted by OIG, coupled with bankruptcy proceedings required significant time in preparing and submitting this specific Board item. The Proterra Chapter 11 bankruptcy was filed on August 7, 2023, effectively causing a stay of any further actions until the results of the bankruptcy became known. Upon finalization of the negotiations with Phoenix in March 2024, this recommendation was promptly prepared and submitted for placement on the Board agenda.

Recommendation

To allow for the continuation of warranties as described in the recommendation and to resolve all outstanding actions related to previous price adjustments, it is recommended that the Board approve the request for approval of contract amendment: *Contract No. RFP-00456: Battery-Electric Buses and Charging System* and ratification of a one-time economic price adjustment to the contract by a two-thirds vote of the Board members present, pursuant to Section 2-8.1(b)(3) of the Miami-Dade County Code. This action is consistent with the recommendation made by the OIG in their draft report dated March 29, 2024.



Jimmy Morales
Chief Operations Officer