

Memorandum



Date: March 2, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

Agenda Item No. 8(F)(6)

From: Daniella Levine Cava
Mayor

Resolution No. R-139-21

Subject: Recommendation for Approval to Reject All Bids: Uniform Rental Services

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the rejection of all bids received under *Invitation to Bid FB-01559, Uniform Rental Services* for multiple County Departments.

On May 6, 2020, the County issued a solicitation under full and open competition to obtain uniform rental services for Aviation, Transportation and Public Works, and Water and Sewer, for an estimated total of 2,400 employees. Uniform rental services include the establishment of an inventory system to deliver uniforms to multiple locations, measurement and alterations of uniforms, weekly maintenance, which includes laundered, dried and ironed uniforms delivered on hangers, and embroidery of emblems.

Three bids were received in response to the solicitation. During the evaluation, it was noted that all bidders took exceptions to the County's terms and conditions, including, but not limited to, indemnification, warranty, access to records, governing law, First Source Hiring Referral Program, and termination provisions. Due to the exceptions taken by all bidders, the County Attorney's Office has deemed them non-responsive.

Therefore, the rejection of all bids received in response to the solicitation is being recommended. To ensure continuity of services, the County has accessed competitively established contract R-BB-19002, available through Omnia Partners (formally known as US Communities), for the purchase of uniform rental services for immediate departmental needs. Based on estimated usage, a request for additional allocation will be submitted at a later date for Board approval.

Scope

The impact would have been countywide in nature.

Fiscal Impact/Funding Source

There is no fiscal impact to the County with the rejection of bids.

Track Record/Monitor

Basia M. Pruna of the Internal Services Department is the Strategic Procurement Division Assistant Director.

Vendors Not Recommended for Award

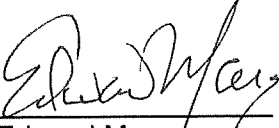
Bidder	Reason for Not Recommending
Aramark Uniform Services	Deemed non-responsive by the County Attorney's Office (opinion attached)
Cintas Corporation	
Unifirst Corporation	

Honorable Chairman Jose "Pepe" Diaz
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Applicable Ordinances and Contract Measures

- The two percent User Access Program provision would have applied.
- The Small Business Enterprise Bid Preference and Local Preference were applicable.
- The Living Wage would not have applied.

Attachment


Edward Marquez
Chief Financial Officer

Memorandum



Date: October 28, 2020

To: Sherry Clentscale
Procurement Contracting Officer
Strategic Procurement Division

From: Melanie Spencer
Assistant County Attorney

Subject: Request for Responsiveness Determination on ITB- NO. FB-01559: Uniform Rental Services

You have asked this office if the bids submitted by Aramark Uniform Services ("Aramark"), Cintas, and UniFirst Corporation ("UniFirst") are responsive. We rely on the information provided in your October 21, 2020 memorandum to this office. All three bidders took exception in varying degrees to the general terms and conditions of the solicitation. For the reasons set forth below, all three bids are non-responsive.

BACKGROUND

On June 19, 2020 bids were received for ITB-No. FB-01559 (the "Solicitation"). In the Solicitation the County sought bids to establish a contract for uniform rental services. The award of the contract was to be made to the responsive, responsible bidder who submitted an offer on all items listed in the solicitation and whose offer represented the lowest price when all items are added in the aggregate. The Solicitation included a link to the General Terms and Conditions for the contract to be awarded. Importantly, the Solicitation states that "[t]hese general terms and conditions are considered **non-negotiable**. These general terms and conditions include important instructions and requirements that affect all bids." (emphasis added). Additionally, addendum No. 3 to the Solicitation included the following question and answer provided to all bidders:

Question 3: If there are legal exceptions, should those exceptions be vetted before the Q & A or submit them with offer?

Answer: If exceptions are taken, bidders may be deemed non-responsive.

Finally, the ITB Submittal Form states that "the execution of this form constitutes the unequivocal offer of the bidder to be bound by the terms of its offer... ."

DISCUSSION

A. Aramark

Aramark submitted an addendum to their bid that included a long list of exceptions to the Solicitation. Aramark stated in its addendum that Aramark

reserves the right to negotiate the County's standard contract services agreement, terms and conditions, and any accompanying scope of work, statement of work, purchase order or other documents that will govern the parties' relationship (collectively the "Agreement"), so that the final

contract is substantially the same as the existing contract between Aramark and the County. It is Aramark's understanding that only terms in the definitive Agreement signed by both parties would control the relationship going forward. Notwithstanding anything in the above referenced ITB to the contrary, Aramark's proposal is not an offer that if accepted by the County, would constitute an agreement binding on Aramark, other than the product pricing, which shall remain valid for ninety (90) days (or as mutually agreed by the parties) from the date of submission of Aramark's response to the ITB.

(emphasis in original).

Aramark also took exception to the indemnification language in the ITB, the warranty language, the termination for convenience provision, termination for default provision, and Aramark also requested that additional language be added related to the flame-resistant merchandise.

In general, a bid 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 Cnty*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982).

Despite Aramark's statement that the eventually negotiated contract would be "substantially similar" Aramark still attempts to materially alter the terms of the Solicitation. The variances put forth by Aramark are material and render Aramark's bid non-responsive. Aramark's bid is non-response chiefly because it is clear from the addendum that Aramark submitted that its "proposal is not an offer that if accepted by the County, would constitute an agreement binding on Aramark." This statement deprives the County of the assurance that if Aramark was awarded the contract, Aramark would enter into the contract as proposed, and as required by the terms of the Solicitation. The terms of the solicitation are set, and award of the contract is based solely on price. Aramark is attempting to transform the solicitation into a different type of solicitation where a negotiation period results in a final contract. Here, as noted in the ITB, the terms and conditions are non-negotiable, and Aramark is distinctly stating that its proposal is not a binding agreement and is instead conditioned on the negotiation of many terms outlined by Aramark. It is also worth noting that Aramark also changed the time that the pricing would remain valid. The ITB submittal form states that "BIDDER FURTHER AGREES THAT PRICES QUOTED WILL REMAIN FIXED FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS FROM DATE SOLICITATION IS DUE." (emphasis in original). By stating that its price terms are valid for a period of 90 days as opposed to 180, Aramark is again materially altering the terms of the Solicitation. It is not necessary to examine the other exceptions taken by Aramark as their bid has already been determined to be non-responsive.

B. Cintas

Cintas, like Aramark took exception to the terms and conditions of the ITB, inviting a negotiation where the terms are non-negotiable. Cintas attempts to modify the indemnification language provided by the County and also attempts to limit their liability as related to fire-resistant clothing. The bid provided by Cintas amounts to a counter-offer to the terms and conditions provided by the County and deprives the County of the assurance that Cintas, if awarded the contract, will be bound by the terms and conditions put forth by the County. In making the modifications to the terms and conditions as related to the indemnification provision, Cintas attempts to change the legal relationship between the

parties envisioned in the solicitation. Such deviations are material and renders the bid non-responsive. *See, e.g., Matter of Metric Sys. Corp.*, B-256343, B-256343.2, 94-1 CPD 360, 1994 WL 269809 (Comp. Gen. June 10, 1994) (holding that protestor's exception to the solicitation indemnification requirement changed the legal relationship between the parties as envisioned by the solicitation and render the protestor's bid non-responsive).

C. UniFirst

UniFirst also submitted an addendum to its bid. UniFirst's qualifying comments are numerous and range from objections to the warranty provision, and indemnification clause, to stating that the termination provisions require "further discussion between the parties." At the outset UniFirst states that UniFirst has "reviewed the General Terms and Conditions ("Contract") and with regard to same, offer the following Qualifying Comments, each of which should be viewed as amending or qualifying the conditions under which UniFirst Corporation ("Bidder") responds to the County's Request for Proposal ("RFP"). This language makes clear that UniFirst does not intend to be bound by the terms of the contract as provided by the County, but instead to negotiate a different contract. As noted above, the Solicitation is not a request for proposals but rather an invitation to bid, and the terms and conditions are non-negotiable. For the reasons set forth above, UniFirst's bid is non-responsive as UniFirst's bid contains multiple material variances between its proposal and the Solicitation.

Accordingly, the proposals from Aramark, Cintas, and UniFirst are all non-responsive.



Melanie Spencer
Assistant County Attorney



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: March 2, 2021

FROM: 
Gen Bonzon-Keenan
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
- _____ 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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)
3-2-21

RESOLUTION NO. R-139-21

RESOLUTION APPROVING REJECTION OF ALL BIDS
RECEIVED IN RESPONSE TO INVITATION TO BID NO. FB-
01559 FOR THE PURCHASE OF UNIFORM RENTAL
SERVICES FOR MULTIPLE COUNTY DEPARTMENTS

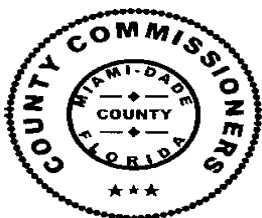
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves rejection of all bids received in response to Invitation to Bid No. FB-01559 for the purchase of uniform rental services for multiple departments. A copy of the solicitation document and the bids received are on file with and available upon request from the Internal Services Department, Strategic Procurement Division.

The foregoing resolution was offered by Commissioner **Sen. Rene Garcia**, who moved its adoption. The motion was seconded by Commissioner **Oliver G. Gilbert, III** and upon being put to a vote, the vote was as follows:

	Jose "Pepe" Diaz, Chairman	aye	
	Oliver G. Gilbert, III, Vice-Chairman	aye	
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	aye
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of March, 2021. 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

Melissa Adames

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Eduardo W. Gonzalez