

Memorandum



Date: March 2, 2021

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

From: Daniella Levine Cava
Mayor

Subject: Recommendation for Approval to Reject Cloud-Hosted Solution for Mainframe Online Reports

Agenda Item No. 8(F)(7)

Resolution No. R-140-21

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the rejection of all proposals received for *Solicitation No. RFP-01172, Cloud-Hosted Solution for Mainframe Online Reports*.

On August 27, 2019, the County issued a solicitation under full and open competition seeking proposals to obtain a cloud-hosted solution for mainframe reports to replace the IBM Content Manager OnDemand System. The solution's intent was to capture, index and store mainframe reports, manage the expiration of the reports based on defined policies and provide security segmentation of reports. The solution would have been inclusive of all software licensing, implementation, integration, configuration, customization, data conversion, training, software maintenance and support services.

Three proposals from IBM, Zia Consulting, Inc., and Flexential Corp. and two no bids were received. Due to deficiencies identified in the proposal received from Flexential Corp, a responsiveness determination was requested from the County Attorney's Office (CAO). The CAO subsequently deemed Flexential Corp's proposal non-responsive. During the evaluation of the two remaining proposals, it was discovered that the Florida Department of Law Enforcement Criminal Justice Information Services requirements were inadvertently not included in the request for proposal. As such the proposers did not comply with this critical security requirement.

Therefore, it is recommended that these proposals be rejected. The Information Technology Department will continue maintaining the existing IBM Content Manager OnDemand System and does not plan to resolicit for these services at this time.

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 all proposals.

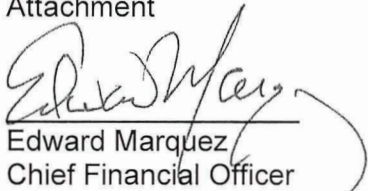
Track Record/Monitor

Sade Chaney of the Internal Services Department is the Procurement Contracting Manager.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision would have applied on all purchases.
- The Small Business Enterprise Selection Factor would not have applied.
- The Local Preference would have applied.
- The Living Wage would not have applied.

Attachment


Edward Marquez
Chief Financial Officer

Memorandum



Date: November 26, 2019

To: Caroline Burgos
Procurement Contracting Officer
Internal Services Department

From: Angela Benjamin
Assistant County Attorney

Subject: Response to Request for Responsiveness Determination: RFP-01172 Cloud-Hosted Solution for Online Mainframe Reports (the "Solicitation")

You have asked this office if a proposal received by Flexential Corp. ("Flexential") in response to the Solicitation that included language stating, "[a]ll Pricing is valid for 30 days" is responsive. In opining on this question, we rely on the information provided in your November 20, 2019 memorandum, Flexential's response to the Solicitation, and the terms of the Solicitation. To the extent any of that information changes, this opinion may need to be revisited.

You have informed me that the estimated value of the contract exceeds \$1 million, and as such I am providing a formal responsiveness opinion.

FACTS

The County issued the Solicitation soliciting proposals to obtain a cloud-hosted solution for mainframe reports to replace the IBM Content Manager OnDemand System. The Solicitation itself provides that any proposal submitted by a proposer "shall be irrevocable until contract award unless the proposal is withdrawn. A Proposal may be withdrawn in writing only, addressed to the County contract person for this Solicitation, prior to the Proposal due date, or ***upon the expiration of 180 calendar days after the opening of the proposals.***" Solicitation at § 1.3 (emphasis added). The Solicitation also provides that "[t]he County anticipates awarding a contract for a five (5) year period." Solicitation at § 1.1.

In response to the Solicitation, Flexential proposed to provide the requested services for a total proposed price of \$1,096,821 for the five-year term. *See* Form 1, Flexential's Proposal. At the bottom of Flexential's proposal (but not in Flexential's Price Proposal Schedule, Form 1), Flexential stated that "[a]ll Pricing is valid for 30 days." *See* Flexential's Proposal. In addition, Flexential marked its proposal as "Confidential." Flexential also separately agreed that its proposal "may be considered to be [a] public record[]" and that it was not submitting any information that it "considers to be a trade secret, proprietary or confidential." *Id.* at p. 29.

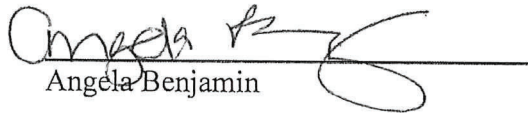
DISCUSSION

Based on the facts set forth above, the proposal from Flexential is non-responsive. In general, a proposal may be rejected or disregarded if there is a variance between the proposal and the advertisement. *See Robinson Elec. Co. v. Dade Cnty.*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). Only when a variance is immaterial or "minor" is a bidder permitted to withdraw the variance. *Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977) ("a bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities"). Proposers who propose

impermissible exceptions to requests for proposals do so at the risk of those exceptions being deemed material to the proposal and having their proposal rejected as nonresponsive.

The determination of whether a variance or irregularity is minor is fact specific and may differ from proposal to proposal. Florida courts use a two part test to determine if 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 Glatstein v. City of Miami*, 399 So. 2d 1005 (Fla. 3d DCA), rev. denied, 407 So. 2d 1102 (Fla. 1981). For the price portion of a proposal, if the irregularity has a clear and demonstrable effect on the amount of the price proposed, 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.”).

Here, Flexential has impermissibly failed to comply with the requirement that it provide an irrevocable offer for 180 days. Instead, it appears as though Flexential expressly conditioned its rate offer as only valid for 90 days. Although this condition is not expressly stated on Flexential’s price proposal form, the condition is stated on the bottom of numerous other pages of its proposal. If its proposal is accepted, Flexential could immediately attempt to raise the proposed prices offered based on its conditional statement, thereby providing it with an unfair competitive advantage over other proposals that complied with the Solicitation’s requirement and failed to include similar language. *See Matter of: Key Power Sys., Inc.*, 1976 WL 9503, at *2, B-187614 (Comp. Gen. 1976) (“It is a basic principle of formally advertised procurements that the contract awarded to one bidder must be on the same terms under which all other bidders responded.”). For the foregoing reasons, Flexential’s proposal is deemed non-responsive.¹


Angela Benjamin

¹ This opinion does not address the impact that Flexential labeling its proposal as “confidential” has on whether the proposal is responsive.



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)(7)

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)(7)
3-2-21

RESOLUTION NO. R-140-21

RESOLUTION APPROVING REJECTION OF ALL
PROPOSALS RECEIVED IN RESPONSE TO REQUEST FOR
PROPOSALS NO. RFP-01172 FOR THE PURCHASE OF
CLOUD-HOSTED SOLUTION FOR MAINFRAME ONLINE
REPORTS FOR THE INFORMATION TECHNOLOGY
DEPARTMENT

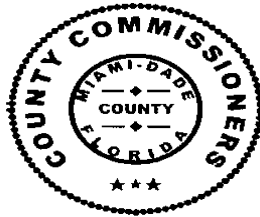
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves rejection of all proposals received in response to Request for Proposals No. RFP-01172 for the purchase of cloud-hosted solution for mainframe online reports for the Information Technology Department. A copy of the solicitation document and the proposals received in response are on file with and available upon request from the Internal Services Department, Strategic Procurement Division.

The foregoing resolution was offered by Commissioner **Joe A. Martinez**, who moved its adoption. The motion was seconded by Commissioner **Danielle Cohen Higgins** 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 the 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.

Oren Rosenthal