

Memorandum



Date: June 2, 2021

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

Agenda Item No. 8(F)(2)

From: Daniella Levine Cava
Mayor

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

Resolution No. R-541-21

Subject: Recommendation for Approval to Award Adobe Software Licenses Maintenance and Support

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. FB-01800, Adobe Software Licenses Maintenance and Support*, for the Information Technology Department. The current contract, FB-00714, was awarded under delegated authority on December 19, 2017 for a three-year term and an allocation of \$900,000 to purchase Adobe software licenses, maintenance and support on an as needed basis. Additional expenditure authority in the amount of \$266,803 was subsequently approved by the Board through Resolution No. R-102-20. The contract was also modified in the amount of \$205,267 under delegated authority, has a cumulative allocation of \$1,372,070, and expires on June 30, 2021.

This replacement contract will provide for the purchase of Adobe software licenses, maintenance and support services on an as needed basis from an authorized Adobe reseller. Adobe is the creator of Portable Document Format (PDF), which has become the accepted standard for secure, electronic documents and images. Adobe is also the manufacturer of the creative cloud software package, as well as numerous software applications that include a collection of graphic design, video and image editing, web development, forms management, and e-learning applications. Adobe applications are utilized to meet a variety of operational needs for the County.

The County established an Enterprise License Agreement (ETLA) with Adobe for the purchase and/or subscription of Adobe licensed products for all County departments. The County currently utilizes various products from the ETLA Subscription-Based program, Adobe Connect and Adobe Presenter products and related services. The new agreement will include Adobe Sign to facilitate the ongoing use of electronic signatures which had significant increases in usage by County departments due to the COVID-19 pandemic. Currently, there are 24 departments utilizing the electronic signature feature; and to date, approximately 12,000 documents have been signed electronically countywide.

On January 27, 2021, the County issued a competitive solicitation under full and open competition noting that award of the contract is contingent on the rejection of all bids received for the prior solicitation, FB-01644. As such, award of this proposed contract may only be made if the Board rejects the bids received in response to FB-01644. The County notified 8,330 vendors upon advertisement through the Bidsync online bidding system of which 93 viewed the solicitation and 11 downloaded it. Three responses, including one "No Bid," was received by the solicitation closing date. There were no local vendors identified during market research that have the specialized certification commensurate with the requirements of the Scope of Services. A companion item requesting the rejection of bids for FB-01644 is on this agenda.

Scope

The scope of this item is countywide in nature.

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, including any cancellation, renewal, or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Fiscal Impact/Funding Source

The fiscal impact for the three-year term is \$3,000,000 and includes \$251,000 to allow for the purchase of additional licenses or products. Should the County choose to exercise, at its sole discretion, the one, three-year option to renew term, the estimated cumulative allocation will be \$6,000,000. The current contract, FB-00714, is valued at \$1,372,070 for a three-year, six month term and expires on June 30, 2021. The allocation under the replacement contract is higher than the current contract due to additional adobe licenses, electronic signature licenses, and maintenance and support services needed during the term of the contract.

Department	Allocation	Funding Source	Contract Manager
Information Technology	\$3,000,000	Internal Service Funds	Tania Gundin
Total:	\$3,000,000		

Track Record/Monitor

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

Vendor Recommended for Award

An Invitation to Bid was issued under full and open competition on January 27, 2021. Three bids were received in response to the solicitation, including one "No Bid" and one bid which was deemed non-responsive by the County Attorney's Office.

Pursuant to Resolution No. R-477-18, the sole responsive bidder is recommended in accordance with the method of award per the solicitation and is non-local.

Vendor	Principal Address	Local Address*	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
CDW Government LLC	230 N Milwaukee Avenue Vernon Hills, IL	None	0	Robert Welyki
			0%	

*Provided pursuant to Resolution No. R-1011-15. Percentage of employee residents is the percentage of vendor's employees who reside in Miami-Dade County as compared to the vendor's total workforce.

Vendors Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
Emergent, LLC	No	Deemed non-responsive by the County Attorney's Office for failure to submit pricing on the price schedule and failure to submit pricing for all items. (opinion attached)
Cybersecurity @ White Rock	No	No Bid*

*A "No Bid" means the vendor responded indicating that 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 vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet search. The lists that were referenced included convicted

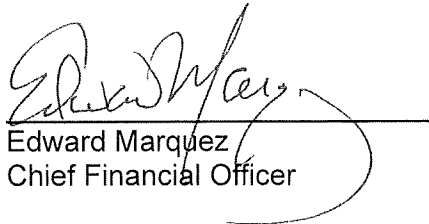
vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Pursuant to Resolution No. R-140-15, prior to re-procurement, 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 comment, and holding meetings and drafting sessions with the user department. The scope of services was updated to include additional adobe licenses, maintenance and support services.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies where permitted by the funding source.
- The Small Business Enterprise Bid Preference and Local Preference were included in the solicitation, but did not impact the outcome.
- The Living Wage does not apply.

Attachment



Edward Marquez
Chief Financial Officer

Memorandum



Date: March 12, 2021

To: Sade Chaney
Procurement Contracting Officer
Miami-Dade Internal Services Department

From: Michael B. Valdes
Assistant County Attorney

Subject: FB-01800 – Adobe Software Licenses, Maintenance, and Support
Bidder: Emergent LLC

You have asked this office if the bid of Emergent LLC (“Bidder”) is non-responsive because (1) Bidder failed to complete and submit the Price Submittal form that was provided with the solicitation and instead submitted a supplemental document that conditioned Bidder’s pricing information and (2) Bidder failed to provide unit pricing information for all of the products in the schedule as required by the solicitation. For the reasons below, it is our opinion that each of these issues, whether standing alone or in conjunction with one another, renders Bidder nonresponsive.

FACTS

We rely on the information provided in your e-mails regarding this subject, conversations regarding this solicitation, the terms of the solicitation itself and Bidders’ bid submissions. The purpose of the solicitation is to establish a contract with an authorized reseller of Adobe products, for the purchase of Adobe Software Licenses, Maintenance and Support Services on an as needed basis. Award of this contract was to be made to the responsive, and responsible bidder whose offer represented the lowest price in the aggregate. Bidders were further informed that: **“If a bidder fails to submit an offer on all items AND fails to submit its offer on the price schedule form as provided in Section 4, its overall offer may be considered non-responsive.”** Prospective bidders could submit their offer by completing the Price Submittal form that was attached to the solicitation.

In March 2020, the Miami-Dade Internal Services Department received bids for this solicitation. However, one of those bidders (Emergent LLC) not only failed to complete the Price Submittal form, they also failed to provide unit pricing information for all of the items listed on that form. Instead, Bidder appears to have submitted a supplemental price quote in lieu of completing the Price Submittal form that conditions Bidder’s pricing information. Specifically, Bidder attached a Price Quote with their bid that (a) placed an expiration date of March 31, 2021 on the quoted pricing and (b) includes the following information:

This quotation is an estimate and is an invitation for you to offer to purchase products and services from Emergent. The total price of this estimate does not include tax. If applicable, sales tax will be applied at the time of purchase. By confirming, referencing, or placing an order based on this quote, you are agreeing that the software products being purchased are for download only and there is no transfer of tangible personal property. Your order is subject to Emergent’s acceptance and to software licensing terms and conditions per reference to an existing license/contract or a newly executed license accompanying your order.

DISCUSSION

As previously stated, there are two potential issues with Bidder's bid: (1) Bidder failed to complete and submit the Price Submittal form that was provided with the solicitation and instead submitted a supplemental document that conditioned Bidder's pricing information and (2) Bidder failed to provide unit pricing information for all of the products in the schedule as required by the solicitation. This responsiveness opinion will deal with each of these issues in turn.

I. Failure to Complete and Submit the Price Submittal Form and Submitting a Supplemental Document that Conditioned Bidder's Pricing Information

As to this issue, the operative question is whether Bidder attempted to reduce, limit, or modify a material solicitation requirement and make its bid conditional and therefore nonresponsive based on the language included in its attached price quote. "Bid-responsiveness determinations focus on whether a bidder has unequivocally offered to perform, without exception, 'the exact thing called for in a solicitation so that acceptance of the bid will bind the contractor to perform in accordance with all of the IFB's material terms and conditions.'" *Monument Realty LLC v. Wash. Metro. Area Transit Auth.*, 535 F. Supp. 2d 60, 74 (D.D.C. 2008) (*quoting In re: Walashek Indus. & Marine*, B-281577, 99-1 CPD ¶ 30, 1999 WL 43510, *1, (Comp. Gen. Jan. 29, 1999)); *see also*, *Glatstien v. City of Miami*, 399 So. 2d 1005 (Fla. 3d DCA 1981) (a deviation in a bid renders such bid nonresponsive if it: (1) would deprive the County of the assurance that the contract would be entered into, performed and guaranteed according to its specific requirements; and (2) adversely affect competitive bidding by placing a proposer in a position of advantage over other proposers).

The previously-quoted language in the attached price quote¹ materially deviates from the terms and conditions of the County's IFB and, therefore, renders Bidder's bid nonresponsive.

First, FB-01725 requires potential bidders to agree to the following: **"IT IS HEREBY CERTIFIED AND AFFIRMED THAT THE BIDDER SHALL ACCEPT ANY AWARDS MADE AS A RESULT OF THIS SOLICITATION. BIDDER FURTHER AGREES THAT PRICES QUOTED WILL REMAIN FIXED FOR A PERIOD OF ONE HUNDRED AND EIGHTY (180) DAYS FROM DATE SOLICITATION IS DUE."** "However, in Bidder's attached Price Quote, the quote indicates that the pricing information is only valid from February 25, 2021 through March 31, 2021.

Second, FB-01725 further requires potential bidders to agree to the following: **"THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF THE BIDDER TO BE BOUND BY THE TERMS OF ITS OFFER. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED BELOW BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE BID NON-RESPONSIVE. THE COUNTY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY RESPONSE THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE BIDDER TO THE TERMS OF ITS OFFER."** However, Bidder's attached Price Quote conditions its pricing information by stating that "[t]his quotation is an estimate and is an invitation for you to offer to purchase products and services from

¹ Extraneous documents submitted with a bid must be considered part of the bid. *See Matter of: Southeastern Metal Fabrication*, B-186750, 76-2 CPD P 265, 1976 WL 9705 (Comp. Gen. 1976); *Matter of: J.A. Wynne Co., Inc.*, B-181807, 74-2 CPD P 268, 1974 WL 11735 (Comp. Gen. 1974).

Emergent. ... Your order is subject to Emergent's acceptance and to software licensing terms and conditions per reference to an existing license/contract or a newly executed license accompanying your order."

Because both of these provisions—whether considered in isolation or together—prevent the County from being assured that Bidder "has unequivocally offered to perform, without exception, 'the exact thing called for in a solicitation so that acceptance of the bid will bind the contractor to perform in accordance with all of the IFB's material terms and conditions,'" Bidder's bid is nonresponsive. *Monument Realty LLC*, 535 F. Supp. 2d at 74 (D.D.C. 2008).

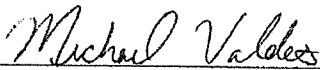
II. Bidder Failed to Provide Pricing Information for All of the Products in the Schedule

Under the terms of this solicitation, potential bidders were required to providing pricing information for all items in the price schedule included in the Bid Submittal Form. In addition, bidders are cautioned that: **"Bidders must provide prices for all items listed below, Item #1 through Item #17. Failure to provide prices for all items listed below may result in the Bidder's entire offer being considered non-responsive."** One of the items (Item #12) in that price schedule was "Adobe Flash Professional – Term License and Maintenance and Support 1 User – 12-month." Bidder's Price Quote, however, states that "Due to the current Adobe specifications, Adobe Flash Professional is not included in Emergent's Bid."

Bidder's failure to offer a bid the single line item in the Price Submittal Form renders this bid nonresponsive. 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 County*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). 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 bid would constitute 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 Glatstien v. City of Miami*, 399 So. 2d 1005 (Fla. 3d DCA 1981).

The failure to include a price for a line item in an award determined by the lowest bidder is such a material deviation that is not waivable. *See Matter of: New Shawmut Timber Co.*, B-286881, 2001 CPD P 42, 2001 WL 185214, *1 (Comp. Gen. Feb. 26, 2001) ("The failure to include a price for a line item evidences a bidder's intent not to be bound or obligated to perform that element of the requirement, and thus generally renders the bid nonresponsive."); *Matter of: The Jorgensen Forge Corp.*, B-255426, 94-1 CPD P 157, 1994 WL 64911, *2 (Comp. Gen. Feb. 28, 1994) ("Where, as here, an IFB provides that award will be made to the low aggregate bidder, a bid that fails to include a price for every item required by the IFB generally must be rejected as nonresponsive since the bidder would not be obligated to provide the item for which it has provided no price.").

By not providing any pricing information in their bid submission for one of the line items in the Price Schedule, Bidder has provided the County with nothing to review and thereby prevented the County from being assured that Bidder "has unequivocally offered to perform, without exception, 'the exact thing called for in a solicitation so that acceptance of the bid will bind the contractor to perform in accordance with all of the [solicitation's] material terms and conditions.'" *Monument Realty LLC v. Washington Metro. Area Transit Auth.*, 535 F. Supp. 2d 60, 74 (D.D.C. 2008). Accordingly, Bidder's bid is nonresponsive.


Michael B. Valdes



MEMORANDUM

(Revised)

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

DATE: June 2, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(F)(2)

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)(2)
6-2-21

RESOLUTION NO. _____ R-541-21

RESOLUTION APPROVING AWARD OF CONTRACT NO. FB-01800 TO CDW GOVERNMENT LLC FOR THE PURCHASE OF ADOBE SOFTWARE LICENSES MAINTENANCE AND SUPPORT FOR THE INFORMATION TECHNOLOGY DEPARTMENT WITH AN AMOUNT NOT TO EXCEED \$6,000,000.00 OVER THE INITIAL THREE-YEAR TERM AND ONE, THREE-YEAR OPTION TO RENEW TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD TO CDW GOVERNMENT LLC, ISSUE THE APPROPRIATE PURCHASE ORDERS TO GIVE EFFECT TO SAME AND EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION, RENEWAL OR EXTENSIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA 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,

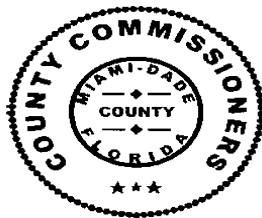
NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves award of Contract No. FB-01800 to CDW Government LLC for the purchase of adobe software licenses maintenance and support for the Information Technology Department with an amount not to exceed \$6,000,000.00, over the initial three-year term and one, three-year option to renew term; and authorizes the County Mayor or County Mayor's designee to give notice of this award to CDW Government LLC, issue the appropriate purchase orders to give effect to same and exercise all provisions of the contract, including cancellation, renewals or extensions, pursuant to section 2-8.1 of the Code of Miami-Dade County, Florida and Implementing Order 3-38.

A copy of the contract document is on file with and available upon request from the Internal Services Department, Strategic Procurement Division.

The foregoing resolution was offered by Commissioner **Rebeca Sosa**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** 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 June, 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