

Memorandum



Date: June 2, 2021

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

Agenda Item No. 8(F)(3)

From: Daniella Levine Cava
Mayor

Resolution No. R-542-21

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

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

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the rejection of all bids received under *Formal Bid No. FB-01644, Adobe Software Licenses, Maintenance and Support*, for the Information Technology Department. The solicitation would have established 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.

The County currently purchases Adobe products and services through Contract No. FB-00714, Adobe Software Licenses and Maintenance Support, which expires on June 30, 2021. This contract was awarded under delegated authority for a three-year term and with an allocation of \$900,000. 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 and has a cumulative allocation of \$1,372,070.

On October 14, 2020, the County issued a competitive solicitation under full and open competition, via Invitation to Bid No. FB-01644, seeking bids from firms authorized to provide Adobe products and services. Three bids were received in response to the solicitation. The solicitation provides that the contract be awarded to the responsive, responsible bidder whose offer represents the lowest price in the aggregate. However, if a bidder fails to submit an offer on all items, its overall offer may be rejected.

Following staff review of the bids received, deficiencies in all three bids were noted and they were submitted to the County Attorney's Office for a responsiveness determination. Subsequently, all bids were deemed non-responsive by the County Attorney's Office as bidders failed to provide pricing for all line items in the solicitation, as required.

A second solicitation, FB-01800, was advertised noting that a recommendation would be submitted to the Board to reject all bids received in response to this solicitation, FB-01644, for Adobe products and services. As such, award of a contract resulting from FB-01800 may only be approved if the Board rejects the bids received in response to this solicitation. There is companion agenda item requesting an award under FB-01800.

Scope

The scope of this item would have been countywide in nature.

Fiscal Impact/Funding Source

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

Track Record/Monitor

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

Vendor Recommended for Award

None.

Vendors Not Recommended for Award

Vendor	Reason for Not Recommending
Emergent, LLC	Deemed non-responsive by the County Attorney's Office (opinion attached)
MVation Worldwide, Inc.	
NextRow Digital	

Applicable Ordinances and Contract Measures

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

Attachment



Edward Marquez
Chief Financial Officer

Memorandum



Date: October 26, 2020

To: Sherry Y. Crockett, CPPB
Procurement Contracting Officer I
Procurement Management Division

From: Angela F. Benjamin
Assistant County Attorney

Subject: Responsiveness Opinion for Solicitation No. FB-01644 – Adobe Software Licenses and Maintenance Support (the “Solicitation”)

You have asked this office if bids received in response to the Solicitation are responsive. In particular, you have asked if bids received by NextRow Digital (“NextRow”), MVation Worldwide, Inc. (“MVation”), and Emergent, LLC (“Emergent”) (collectively, the “Bidders”) are non-responsive. We rely on the information provided in your October 16, 2020 memorandum, the Solicitation documents, and the Bidder’s bid submittals. To the extent any of that information changes, the opinions provided here also may change. I am advised that the estimated value of the contract exceeds \$1 million, and as such provide a formal responsiveness opinion.

For the reasons described below, each of the Bidder’s bids are non-responsive, cannot be accepted by the County, and must be rejected.

FACTS

The Solicitation is seeking 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. The Solicitation provides that “the contract will be made to the responsive, responsible Bidder whose offer represents the lowest price in the aggregate. If a Bidder fails to submit an offer on all items, its overall offer may be rejected.” See Solicitation at § 2.4. Under § 4.2 of the Solicitation, Price Schedule, provides that “Bidders must provide prices for all items listed below. Failure to provide prices for all items listed below may result in the Bidder’s entire offer being considered non-responsive.”

According to your memo, each of the Bidders failed to provide pricing for all line items within Section 4, Bid Submittal Form, paragraph 4.2 Price Schedule. In addition, MVation included an alternate price schedule.

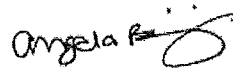
DISCUSSION

The purpose of the competitive bidding process is to, among other things, “secure fair competition upon equal terms to all bidders . . . and to afford an equal advantage to all desiring to do business with the county, by affording an opportunity for an exact comparison of bids.” *Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977). A bid that contains a material non-conformity from the Solicitation must be rejected as non-responsive. See *ViON Corp. v. United States*, 122 Fed. Cl. 559, 575 (Fed. Cl. 2015) (“where a proposal fails to conform to a material term of the solicitation, the proposal is unacceptable and may not be the basis of an award. ‘[A]n agency’s determination that a proposal is acceptable may be deemed arbitrary and capricious if the proposal did not provide what was called for in the solicitation.’”) (internal citations omitted). Only when a variance is

immaterial or "minor" is a bidder permitted to withdraw the variance. *Harry Pepper*, 352 So. 2d at 1129 ("a bidder cannot be permitted to change his bid after the bids have been opened, except to cure minor irregularities").

Florida courts use a two part test to determine if a specific noncompliance in a proposal constitutes a substantial and thus non-waivable 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 effect competitive bidding by placing the proposer in a position of advantage over other proposers. See *Robinson Elec. Co. v. Dade Cnty.*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982) (internal citations omitted). For the price portion of a proposal, if the irregularity has a clear and demonstrable affect 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").

Because each of the Bidders failed to provide pricing for all lines listed on Form 4-2, their bids deprive the County of the knowing what the price would be for each of those items or even whether it would receive the items at all. Further, to allow any of the Bidders to now provide or negotiate prices for those items would place the Bidders at a competitive advantage over other bidders as they had an opportunity to evaluate their competitor's prices. Thus, none of the Bidder's bids are responsive to the Solicitation, cannot be accepted, and must be rejected.



Angela F. Benjamin



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)(3)

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)(3)
6-2-21

RESOLUTION NO. _____ R-542-21

RESOLUTION APPROVING REJECTION OF ALL BIDS RECEIVED
IN RESPONSE TO INVITATION TO BID NO. FB-01644 FOR THE
PURCHASE OF ADOBE SOFTWARE LICENSES, MAINTENANCE
AND SUPPORT FOR THE INFORMATION TECHNOLOGY
DEPARTMENT

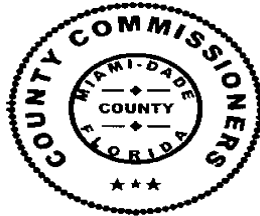
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves rejection of all bids received in response to Invitation to Bid No. FB-01644 related to the purchase of adobe software licenses, maintenance and support for the Information Technology Department. 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 **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 the 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

By: **Melissa Adames**
Deputy Clerk

Approved by County Attorney
as to form and legal sufficiency.

A handwritten signature in dark ink, appearing to read "E. Gonzalez", is written over a horizontal line.

Eduardo W. Gonzalez