

Date: February 7, 2023

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

From: Daniella Levine Cava *Daniella Levine Cava*
Mayor

Agenda Item No. 8(P)(15)

Resolution No. R-87-23

Subject: Recommendation for Approval to Reject Prevailing Wage Consulting Services for HUD Programs

Summary

This item is for the rejection of all proposals received in response to a solicitation for the provision of prevailing wage and labor compliance administrative services for programs administered by the Public Housing and Community Development Department (PHCD), subsidized by the Department of Housing and Urban Development (HUD). During negotiation strategy meetings, the negotiation team determined they would not be able to negotiate a contract based on the fixed price per project requested in the solicitation. Consequently, the rejection of proposals is being recommended. PHCD will revise the scope of services to include a different pricing strategy, and a new solicitation will be advertised to ensure fair, open, and increased competition. There is no current contract for these services and labor compliance monitoring is currently being conducted by PHCD's various divisions, depending on the funding source of the project.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the rejection of all proposals received for *Solicitation No. RFP-02180, Prevailing Wage Consulting Services for HUD Programs* for PHCD.

Background

On April 14, 2022 the County issued a competitive solicitation to obtain a consultant for prevailing wage and labor compliance administrative services for programs that are subject to Davis-Bacon and/or other wage law requirements and Section 3 requirements that provide economic opportunities to low and very low-income persons. The consultant would ensure the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701, 24 CFR Part 75 which implements Section 3 of the Housing and Urban Development Act of 1968, the Copeland Act, 40 U.S.C. 3145, and any and all related acts for labor compliance as stipulated by the Department of Labor (DOL) and HUD are being met for the construction of any project receiving federal funds where compliance of these requirements is required.

On May 25, 2022, six responses were received, including one "No Bid." Four proposals were subsequently deemed non-responsive by the County Attorney's Office. The Competitive Selection Committee evaluated the sole responsive proposal and recommended to proceed to negotiations with the proposer. Prior to negotiations, several strategy meetings were held, and the negotiation team determined that they would not be able to negotiate a contract based on the fixed price per project requested on the solicitation and that the pricing structure should be modified.

Scope

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

Fiscal Impact/Funding Source

There is no fiscal impact to the County for the rejection of all proposals.

Track Record/Monitor

Pearl Bethel of the Strategic Procurement Department is the Procurement Contracting Manager.

Delegated Authority

There is no delegated authority for this rejection.

Vendors Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
AmeriNat, LLC	No	Rejection of Proposals
Anchin, Block & Anchin LLP*	No	
Contractor Compliance and Monitoring, Inc.*	No	
Grimes Consultant Group LLC*	Yes	
Xena Management Group, Inc.*	Yes	
Fiscal Advising, Consulting & Strategizing, Inc.	No	No Bid*

*Deemed non-responsive by the County Attorney's Office (opinion attached).

**A "No Bid" means the vendor responded indicating that it will not be providing an offer.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision would not have applied.
- The Small Business Enterprise Selection Factor and Local Preference did not apply due to funding source.
- The Living Wage would not have applied as the services are not covered by the Ordinance.

Attachment



Morris Copeland
Chief Community Services Officer

Memorandum



Date: July 5, 2022

To: Jonathan Desverguñat
Procurement Contracting Officer
Internal Services Department

From: Keoki M. Baron
Assistant County Attorney

Subject: Responsiveness Determination for RFP No. 02180 – Prevailing Wage Consulting Services for HUD Programs (the “Solicitation”)

You have asked this office if bids submitted by the following four (4) vendors in response to the above-referenced Solicitation are responsive: Anchin, Block & Anchin LLP (“Anchin”); Contractor Compliance & Monitoring, Inc. (“CCMI”); Grimes Consultant Group LLC (“Grimes”); and Xena Management Group, Inc. (“Xena”). Each of these vendors are analyzed separately below. We rely on the information provided in your memorandum dated June 6, 2022, and the materials accompanying the memorandum; if there is any different or additional information relating to the Solicitation or the above-referenced vendors, please let me know immediately as such information may alter the conclusions set forth herein.

BACKGROUND

The purpose of the Solicitation is to establish a contract for prevailing wage and labor compliance consulting and administrative services for programs administered by the Miami-Dade County Public Housing and Community Development Department and subsidized by the U.S. Department of Housing and Urban Development, and that are subject to Davis-Bacon Act requirements and/or other wage law requirements and Section 3 of the Housing and Urban Development Act of 1968 requirements that provide economic opportunities to low-income persons. The awarded vendor is to ensure that the requirements of the Davis-Bacon Act and any and all related labor compliance acts are being met on the construction of any project receiving federal funds where compliance of these requirements is required. The awarded vendor will be assigned work under the contract on an as needed basis.

With respect to exceptions, the Solicitation’s General Terms and Conditions advise proposers as follows: “No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County’s sole discretion, constitutes a material deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County’s sole discretion, be deemed nonresponsive.” *See* General Terms and Conditions at § 1.3.

Also relevant, on May 18, 2022, the County published an addendum to the Solicitation (the “May 18, 2022 Addendum”) which, among other things, requires that proposers use a revised price form in submitting their Proposal Submission Package instead of the original price form called for in the Solicitation. The revised price form requests pricing on a per project basis instead of on a monthly basis (as was requested in the original price form). More specifically, there are four total line items: two line items for specific monitoring services on projects valued under \$350,000.00, and two more line items for the same monitoring services on projects valued at \$350,000.00 or more. The revised price form instructs proposers to submit pricing for each of the four line items as one “flat, fixed price” per project. Further,

the Solicitation advised proposers that their proposed pricing information would be used as part of an evaluation process utilizing a Competitive Selection Committee to determine the highest ranked proposer.

DISCUSSION

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 Glatstein v. City of Miami*, 399 So. 2d 1005, 1007-08 (Fla. 3d DCA 1981).

One court has explained that the purpose of the competitive bidding process is, among other things, “to 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 2977) (citing *Wester v. Belote*, 138 So. 721, 723-24 (Fla. 1931)).

I. Anchin

A. Exceptions to Pricing and Invoicing Terms

Anchin conditioned its bid by proposing the following “requirements” that deviate from the Solicitation: (i) an assertion that its “rates are subject to adjustment annually, effective September 1st of each year”; and (ii) “invoicing requirements” that are inconsistent with the invoicing terms set forth in the Solicitation. As explained below, both of these proposed conditions constitute material variances from the Solicitation.

With respect to the annual rate adjustment proposed by Anchin, the May 18, 2022 Addendum made expressly clear that the pricing proposed by the awarded proposer would be fixed for the duration of the contract term and that “[n]o other increase will be included.” As for Anchin’s proposed invoicing requirements, the standard terms and conditions of the Solicitation (as set forth in the included draft form agreement) provide that payment for a proper invoice is due 45 calendar days from receipt of such invoice in accordance with applicable state law and provisions of the Code of Miami-Dade County. *See Draft Form of Agreement*, Article 9. In contravention of this term, Anchin’s bid seeks to require that all invoices be “due within the earlier of thirty (30) days of the invoice date or three (3) days prior to the issuance of our report or testimony.”

These material variances render Anchin’s bid non-responsive, as they ultimately deprive the County of assurance that a contract will be entered into and performed in accordance with the specific requirements of the Solicitation. *See Glatstein*, 399 So. 2d at 1007-1008.

B. Failure to Complete the Revised Price Form

Anchin failed to use the revised price form provided and required by the May 18, 2022 Addendum, and instead submitted its pricing on the original price form initially advertised in the Solicitation. As a result, the pricing proposed by Anchin is on a monthly basis rather than a per project basis specifically using a “flat, fixed price” per project. Under these circumstances, Anchin’s failure to use the revised price form constitutes a material variance that also renders its bid non-responsive, as it deprives the County of “an opportunity for an exact comparison of bids.” *Harry Pepper*, 352 So. 2d at 1192.

II. CCMI

In response to the Solicitation, CCMI materially deviated from the requirements of the revised price form in two different ways. First, as mentioned, the revised price form instructed proposers to submit pricing for each of the four line items as one “flat, fixed price” per project. However, for three of the four line items, CCMI proposed pricing based on a percentage of the total contract price for a given underlying project. Second, on two of the four line items—namely, for the monitoring services on projects valued under \$350,000.00—CCMI qualified its bid by requiring minimum pricing.

These are material deviations that ultimately deprive the County of assurance that a contract will be entered into and performed in accordance with the specific requirements of the Solicitation. *See Glatstein*, 399 So. 2d at 1007-1008. In addition, regarding CCMI’s failure to propose flat, fixed pricing on a per project basis in particular, such failure deprives the County of “an opportunity for an exact comparison of bids.” *Harry Pepper*, 352 So. 2d at 1192.

III. Grimes

Grimes did not complete and include the revised price form in submitting its bid, nor did it otherwise provide any proposed pricing in response to the Solicitation. Prospective proposers were required to provide such pricing information pursuant to Section 3.1 of the Solicitation, which provides that “[a]ll documents and information” required by the Proposal Submission Package “must be fully completed and signed as required and submitted in the manner described.” Further, as mentioned, proposers were instructed that the proposed pricing information would be used as part of the evaluation process to determine the highest ranked proposer, with the price criteria representing 25% of the total evaluation criteria points.

Grimes’ failure to submit any proposed pricing renders its bid non-responsive, as it deprives the County of assurance that a contract will be entered into and performed in accordance with the specific requirements of the Solicitation. *See Glatstein*, 399 So. 2d at 1007-1008; *see also 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: KW Control Sys., Inc.*, B-246963, 91-2 CPD P 543, 1991 WL 280101 (Comp. Gen. Dec. 13, 1991) (“A bid must be rejected as nonresponsive if it is not clear from the face of the bid what the government’s total payment obligation would be upon acceptance.”).

The remaining issue you identify as to Grimes’ failure to provide the information requested in the Proposer Information section of the Proposal Submission Package—including relevant experience, qualifications, and past performance—concerns proposer responsibility, not responsiveness.

IV. Xena

The revised price form submitted by Xena in response to the Solicitation failed to provide any pricing for the following two line items: (1) “Davis Bacon Compliance Monitoring” services on projects valued at \$350,000 or more; and (2) “Section 3 Compliance Monitoring” services on projects valued at \$350,000 or more. This failure deprives the County of the assurance that the contract will be entered into and performed in accordance with the specific requirements of the Solicitation, and thereby renders Xena’s bid non-responsive. *See Glatstein*, 399 So. 2d at 1007-1008; *see also Matter of: New Shawmut Timber*, 2001 WL 185214, *1 (“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: KW Control*, 1991 WL 280101 (“A bid must be rejected as nonresponsive if it is not clear from the face of the bid what the government’s total payment obligation would be upon acceptance.”).

In sum, for the reasons set forth above and based upon the facts provided, each of the respective bids submitted by Anchin, CCMI, Grimes, and Xena is non-responsive.

/s/ Keoki M. Baron



MEMORANDUM

(Revised)

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

DATE: February 7, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(P)(15)

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(P)(15)
2-7-23

RESOLUTION NO. R-87-23

RESOLUTION REJECTING ALL PROPOSALS RECEIVED IN
RESPONSE TO REQUEST FOR PROPOSAL NO. RFP-02180
FOR THE PURCHASE OF PREVAILING WAGE CONSULTING
SERVICES FOR HUD PROGRAMS

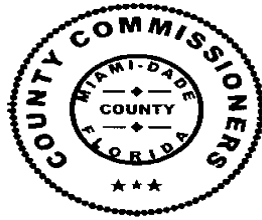
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board rejects all proposals received in response to Request for Proposal No. RFP-02180 for the purchase of prevailing wage consulting services for HUD programs. A copy of the solicitation document and the proposals received in response are on file with and available upon request from the Strategic Procurement Department.

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:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 7th day of February, 2023. 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

LUIS G. MONTALDO, CLERK AD INTERIM

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

KMB

Keoki M. Baron