

Date: September 6, 2023

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

From: Daniella Levine Cava
Mayor



Agenda Item No. 8(P)(8)

Resolution No. R-777-23

Subject: Recommendation for Approval to Award a Contract for Sodium Permanganate

Summary

This item is for award of a competitive contract for the purchase and delivery of sodium permanganate in a 20% solution in tanker truck loads for the Water and Sewer Department (WASD). This chemical is used for the treatment of potable water such as for disinfection, to lower the color, and to reduce total organic carbon. Approval of the contract will allow WASD to continue the treatment of potable water for the County's water distribution system to protect the health of County residents in accordance with the standards published by the American Public Health Association, American Water Works Association, and the standards referenced in paragraph 62-555.320(3)(a) of the Florida Administrative Code. Due to current market conditions, the allocation for this replacement contract is higher than under the current contract. In the event the applicable Producer Price Index decreases, the County may adjust prices downward based on the twelve-month percent change in the index.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. EVN0000185, Sodium Permanganate*, to Chemrite, Inc. for WASD in the amount of \$4,820,513 for a five-year term. The current contract, *FB-00715*, was awarded by the Board through Resolution No. R-332-18 and has a value of \$2,494,800 for a five-year and six-month term.

Background

On October 3, 2022, a solicitation was issued under full and open competition for the purchase and delivery of sodium permanganate in a 20% solution in tanker truck loads. In addition to providing the chemical compound, the recommended vendor is required to provide the necessary training to WASD staff on the proper and safe handling of the chemicals, at no additional cost.

Upon advertisement of the solicitation on INFORMS, 46 vendors were notified, of which six viewed the solicitation and three downloaded it. Vendors who were notified included those identified during the market research, that are doing business, or participated in recent solicitations issued by other municipalities in Florida. On December 1, 2022, three bids were received in response to the solicitation, and none of the vendors were local.

Carus LLC, the second lowest bidder, filed a Notice of Intent to Protest on April 20, 2023. The formal Bid Protest was filed with the Clerk of the Board on April 24, 2023. On July 19, 2023, a bid protest hearing was conducted by Gisela Cardonne Ely (Hearing Examiner). On August 13, 2023, the Hearing Examiner denied the protest and upheld the Mayor's recommendation to award to Chemrite, Inc. based on the evidence presented, the arguments made, and applicable procurement law. The Hearing Examiner's Report and Recommendations is attached.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$4,820,513. The current contract is valued at \$2,494,800 for a five-year and six-month term and expires on November 30, 2023. The allocation under the replacement

contract is higher than the current contract due to current market conditions, resulting in an increase in the unit price for the chemical. The current contract was awarded at \$0.586 per pound, and the price has been adjusted three times since inception based on changes in the Producer Price Index, as published by the U.S. Bureau of Labor Statistics. Effective June 1, 2023, the price is \$1.214 per pound after the fourth price adjustment. The lowest bidder's offer under the replacement solicitation was \$1.218 per pound and subsequently was negotiated to a better offer of \$1.215 per pound. The award value is based on the estimated quantities needed for the five-year term at the new unit price.

Department	Allocation	Funding Source	Contract Manager
WASD	\$4,820,513	Proprietary Funds	Susan Pascul
Total:	\$4,820,513		

Track Record/Monitor

Manuel Jimenez of the Strategic Procurement Department (SPD) is the Procurement Contracting Manager.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to give notice of this award, issue the appropriate purchase orders, and exercise all provisions of the contract, including any cancellation or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

An Invitation to Bid was issued under full and open competition. Three bids were received in response to the solicitation.

Pursuant to Resolution No. R-477-18, the lowest bidder is recommended in accordance with the method of award per the solicitation, but is non-local due to the specialized nature of the chemical being purchased.

Vendor	Principal Address	Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Chemrite, Inc.	5202 Belle Wood Court Suite 104 Buford, GA	None	0	Frank J. Opp
			0%	

Vendors Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
Carus LLC	No	Higher than lowest bid
Shannon Chemical Corporation	No	

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with SPD'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 remove leasing of storage tanks.

Applicability of Ordinances and Contract Measures

- The two percent User Access Program applies where permitted by funding source.
- The Small Business Enterprise Bid Preference and Local Preference were applicable.
- The Living Wage Ordinance does not apply.

Attachment



Jimmy Morales
Chief Operations Officer

Juan Fernandez-Barquin
CLERK OF THE COURT AND COMPTROLLER
Miami-Dade County, Florida



CLERK OF THE BOARD OF COUNTY COMMISSIONERS

STEPHEN P. CLARK GOVERNMENT CENTER

SUITE 17-202

111 N.W. 1st Street

Miami, FL 33128-1905

Telephone: (305) 375-5126

August 14, 2023

Ms. Kelly Frasco
Carus LLC
315 5th Street
Peru, IL Zip 61354

Re: EVN0000185 – Sodium Permanganate

Dear Ms. Frasco,

Forwarded for your information is a copy of the Findings and Recommendation filed by Judge Gisela Cardonne Ely, Hearing Examiner, in connection with the bid protest hearings, held on Wednesday, July 19, 2023.

Should you have any questions regarding this matter, please do not hesitate to contact Kerry Khunjar Breakenridge at 305-375-5108.

Sincerely,

Juan Fernandez-Barquin
Clerk of The Court and Comptroller

By 

Basia Pruna, Director
Clerk of the Board Division

BP:kkb

cc: Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners (via email)
Honorable Daniella Levine Cava, Mayor, Miami-Dade County (via email)
Jimmy Morales, Chief Operations Officer, Office of the Mayor (via email)
Edward Marquez, Chief Financial Officer, Office of the Mayor (via email)
Barbara Gomez, Director, Finance Department (via email)
Geri Bonzon-Keenan, County Attorney, CAO (via email)
Gerald Sanchez, First Assistant County Attorney, CAO (via email)

MDC004

Kelly Frasco

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Eduardo Gonzalez, Assistant County Attorney, CAO (via email)

Rochelle Hall, Assistant County Attorney, CAO (via email)

Angela Benjamin, Assistant County Attorney, CAO (via email)

Clara Pimentel, Assistant Agenda Coordinator, CAO (via email)

Elizabeth Alfonso Ruiz, Paralegal Specialist, CAO (via email)

Katherine Sanchez , CAO (via email)

Adeyinka Majekodunmi, Commission Auditor, OCA (via email)

Namita Uppal, Chief Procurement Officer, ISD (via email)

Lydia Osborne, Assistant Director, Strategic Procurement Department (via email)

Manuel Jimenez, Procurement Contracting Manager, Strategic Procurement (via email)

Tiffany Taylor, Manager, Vendor Outreach & Support Section, Strategic Procurement (via email)

Reginald Hires, Vendor Services Specialist, Strategic Procurement (via email)

Marcelo Cam, Procurement Contracting Officer 1, Strategic Procurement (via email)

Craig.Principi@carusllc.com, Carus LLC (via email)

Melissa.Trilikis@carusllc.com, Carus LLC (via email)

Kelly.Frasco@carusllc.com, Carus LLC (via email)

MDC005

**CLERK OF THE BOARD OF
COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA
IN RE BID PROTEST
INVITATION TO BID NO. EVN0000185**

**CARUS, LLC,
Petitioner,**

v.

**MIAMI-DADE COUNTY,
Respondent.**

REPORT AND RECOMMENDATION

Miami-Dade County issued an invitation to bid on a contract for a solution of 20% sodium permanganate to be delivered in tanker truck loads. The County received three bids by the invitation deadline, in December 2022. The petitioner, Carus, LLC, submitted a bid for \$5,276,775. The lowest bidder, Chemrite Inc., submitted its bid for \$4,820,512. Chemrite was the recommended contract winner and Carus filed its timely bid protest.

This Hearing Examiner denies the bid protest and affirms the County's recommendation to award the contract to Chemrite Inc., the lowest bidder.

Sec. 2-8.4 of the bid solicitation procedures provides that:

(g) Unless the hearing examiner finds that the County Mayor or County Mayor's designee acted fraudulently, arbitrarily, illegally, or dishonestly, the hearing examiner's findings and recommendation shall be presented to the Commission together with the recommendation of the County Mayor.

The petitioner argues that the County acted arbitrarily on two grounds: that the competing bid by Chemrite was not responsive to the invitation, and that the

County allowed amendments to the original bid, after it was submitted. The formal bid protest by Carus is dated April 19, 2023. The only ground asserted in that letter is the argument that Chemrite is not a manufacturer of the product sought by the County. Carus amended its protest on May 23, after the permitted deadline of April 24.

The hearing on Carus' protest took place on July 19, 2023. The parties informed the Hearing Examiner that the present contract for the chemical had been extended, by agreement, until November 30, 2023.

The County's witness, Mr. Marcelo Cam, testified that he reviewed the bids, and that first and foremost, he would look at the price proposed by a bidder in an invitation to bid process. Sec. 2.3 of the invitation to bid provides:

Award of this contract will be made to the single responsible Bidder who submits an offer on the single item listed in the solicitation and whose offer represents [sic] the lowest price. (Emphasis added).

Here, there is no question that Chemrite's bid is \$456,263 is lower than the bid of Carus. Mr. Cam and others in the department of procurement reviewed the application by Chemrite, and found that it was responsive to the invitation to bid. *Emerald Correctional Mgmt. v. Bay County Board*, 955 So.2d 647, 651 (Fla 1st DCS 2007) states that "...the consideration of a response to a request for bid is controlled by the estimated costs....", which is a very different standard from a request for proposal, as testified by Mr. Marcelo Cam. *City of Sweetwater v. Solo Construction Corp.*, 823 So.2d 798 (Fla. 3d DCA 2002)

The bid invitation allows the County:

.... at its sole discretion, may request additional information to assess Bidder's responsibility.
Sec. 2.4.6

Mr. Cam proceeded to check Chemrite's references and requested that Chemrite provide additional references, plus an affidavit that Chemrite is registered with the County as a vendor.

This Hearing Examiner finds that the request for follow up references and an affidavit do not materially alter Chemrite's application.

The solicitation packet for the sodium permanganate provides:

Sec. 2.4.1 Bidder shall be the product manufacturer, or be authorized by the manufacturer or the designee, as a direct distributor to be considered for award.
(Emphasis added).

The application by Chemrite stated that it is a manufacturer of the product, and that it will deliver a 20% solution of sodium permanganate. Chemrite also discloses its point of shipping. The statement by Carus that Chemrite is not a manufacturer, since it may use material which is then mixed with water to provide the final product, is Chemrite's opinion. The County has "... wide discretion the bidding process and its decision, when based on an honest exercise of the discretion, should not be overturned even if reasonable persons might disagree." *Emerald*. The invitation to bid has no definition of manufacturer.

This Hearing Examiner finds that the County exercised its discretion in accepting the proposal by Chemrite. *Emerald* recognizes that a reasonable person,

in this case, entity, may disagree with the Conty's decision, which is not grounds to overturn the bid award. At 651.

Carus next argues that Chemrite failed to disclose the termination of its contract with Gwinnett County, Georgia. Mr. Craig Principe, sales director for Carus, testified that Carus had in its records evidence of the termination of Chemrite's contract in Georgia, since May or June, 2020. The current proposals were submitted to Miami-Dade County by early 2023. Carus did not provide the negative information to the County until almost two- and one-half years later, on May 23, 2023, more than one month after the award on April 19, 2023.

City of Sweetwater & Solo Const. Corp., 823 So.2d 798 (Fla. 3d DCA 2002) defines arbitrary and capricious: "... to include acts taken with improper motive, without reason or for a reason which is merely pretextual." At 802.

The Hearing Examiner reviewed the exhibits introduced into evidence, heard testimony of witnesses for both parties at the hearing of July 19, 2023 and reviewed the memoranda of law submitted by both parties. The Hearing Examiner finds that the petitioner, Carus, failed to prove that the County acted with improper motive, without reason or for a pretextual reason. Upon consideration,

The bid protest by Carus, LLC is denied. The recommendation by Miami-Dade County to award the contract to Chemrite Inc. is affirmed.

Dated at Miami-Dade County on August 13, 2023.


Gisela Cardonne Ely
Hearing Examiner



MEMORANDUM

(Revised)

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

DATE: September 6, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

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

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)(8)
9-6-23

RESOLUTION NO. _____ R-777-23

RESOLUTION APPROVING AWARD OF CONTRACT NO. EVN0000185 TO CHEMRITE, INC. FOR THE PURCHASE OF SODIUM PERMANGANATE FOR THE WATER AND SEWER DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$4,820,513.00 FOR THE FIVE-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD TO CHEMRITE, INC., ISSUE THE APPROPRIATE PURCHASE ORDERS TO GIVE EFFECT TO SAME AND EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION AND EXTENSION PROVISIONS, 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:

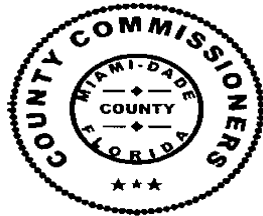
Section 1. This Board approves award of Contract No. EVN0000185 to Chemrite, Inc. for the purchase of sodium permanganate for the Water and Sewer Department in an amount not to exceed \$4,820,513.00 for the five-year term.

Section 2. This Board authorizes the County Mayor or County Mayor's designee to give notice of this award to Chemrite, Inc., issue the appropriate purchase orders to give effect to same, and exercise all provisions of the contract, including any cancellation and extension provisions, 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 Strategic Procurement Department.

The foregoing resolution was offered by Commissioner **Anthony Rodriguez** , who moved its adoption. The motion was seconded by Commissioner **Kionne L. McGhee** 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 6th day of September, 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in dark ink, appearing to be "AB" followed by a flourish, positioned above a horizontal line.

Angela F. Benjamin
Rochelle A. Hall