

Date: May 7, 2024

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-406-24

Subject: Recommendation for Approval to Award a Contract for Garbage Collection and Disposal Services for MDAD

Summary

This item is for the purchase of garbage collection and disposal services for the Miami-Dade Aviation Department (MDAD) to dispose of the trash and garbage generated throughout the various MDAD locations. On April 4, 2023, the Board of County Commissioners (Board) approved a one-year extension for MDAD and a five-year extension for all other County departments under the current contract 6938-2/22, *Garbage Collection and Disposal* through Resolution No. R-303-23. The Department of Solid Waste Management (DSWM) is in the process of transitioning garbage collection services in-house, and the extension was approved to allow DSWM to complete needed acquisitions and personnel recruitments. As approved under Resolution No. R-303-23, in the event that DSWM was not able to take over the MDAD sites prior to the one-year extension period, a competitive contract would be established.

Recommendation

It is recommended that the Board approve a competitive contract award, *Contract No. EVN0000638, Garbage Collection and Disposal Services*, to Waste Management Inc. of Florida for MDAD in the amount of \$11,715,760 for a five-year term. This contract will replace *Contract No. 6938-2/22* for MDAD locations, approved by the Board via Resolution No. R-740-13. The current contract will remain in effect through May 31, 2028, for other County-owned locations.

Background

An Invitation to Bid (ITB) was issued under full and open competition on August 22, 2023. Upon advertisement of the solicitation in INFORMS, 176 bidders were notified, of which 47 downloaded the solicitation. Vendors who were notified included those identified during the market research, that are doing business, or participated in recent solicitations. On October 6, 2023, the County received three bids, all from local firms.

The contract provides for all operations in connection with garbage collection and legal disposal services at over 60 locations throughout MDAD properties, including: Miami International Airport, Miami Executive Airport, Miami Opa Locka Airport, and Homestead Airport. The awarded vendor is required to provide all labor, equipment, and materials, including metal containers designed for storage of trash and garbage, maintenance of said containers, collection of the refuse, and legal disposal of same. The recommended vendor is expected to perform scheduled and on-demand services and be available for emergency calls or services at all times.

Great Waste & Recycling Services, LLC, the second lowest bidder, filed a formal bid protest on January 29, 2024. On March 20, 2024, a bid protest hearing was conducted by Judge Joseph Davis (Hearing Examiner). On April 1, 2024, the Hearing Examiner denied the protest and upheld the Mayor's recommendation to award to Waste Management Inc. of Florida based on the evidence presented, the arguments made, and applicable procurement law. The Hearing Examiner's Report and Recommendations is attached.

Scope

The impact of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is \$11,715,760, which includes a 20 percent contingency amount to offset future price increases, contemplated by the contract's terms and conditions, and to cover any future service changes. The current MDAD contract is valued at \$10,176,009 for a ten-year and six-month term and expires on May 31, 2024. The annualized allocation under the proposed contract is higher than the current contract due to additional bid line items, higher frequencies added to reflect current departmental service requirements, and higher pricing.

Prior to re-procurement, a full and thorough analysis of the scope, service frequencies and projected needs was conducted to ensure the replacement contract reflects the County's current operational demands. As a result of this review, service frequencies for some of the bid line items had to be augmented, which attributed to a substantial allocation increase. For example, there are 30 bid line items where the proposed pricing is lower; however, due to the higher frequency of services requested, the annual fiscal impact is \$897,085, and the fiscal impact for the five-year term is \$4,485,425. There are 15 bid line items where the County received higher pricing, resulting in an annual fiscal impact of \$267,099, and the fiscal impact for the five-year term is \$1,335,495. Also, the Consumer Price Index has increased more than 30 percent since the time the current contract was awarded. While the annualized allocation is higher for the proposed contract, the competitive prices obtained are approximately 12 percent lower than the current contract prices for the MDAD locations. Out of the 66 bid line items advertised, more than 73 percent or 48 line items resulted in lower pricing.

Department	Allocation	Funding Source	Contract Manager
MDAD	\$11,715,760	Proprietary Funds	Sylvia Novela
Total	\$11,715,760		

Track Record/Monitor

Natalya Vasilyeva 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 to the recommended vendor, issue the appropriate purchase orders to give effect to same and exercise all provisions of the contract, including any cancellation or extensions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award

Vendor	Principal Address	Local Address	Number of Employee Residents	Principal
			1) Miami-Dade 2) Percentage*	
Waste Management Inc. of Florida	800 Capitol Street, Suite 3000 Houston, TX	8801 NW 91 Street Medley, FL	267	David M. Myhan
			81.9%	

*Provided pursuant to Resolution No. R-1011-15. The 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
A.E.S. Portable Sanitation, Inc.	Yes	Higher than lowest bid
Great Waste & Recycling Services, LLC	Yes	

Due Diligence

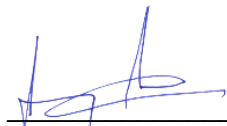
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with SPD's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet 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 comments, and holding meetings and drafting sessions with the user department. The scope of services was updated to meet MDAD's current operational needs and requirements.

Applicability of Ordinances and Contract Measures

- The two percent User Access Program does not apply.
- The Small Business Enterprise Bid Preference and Local Preference applied.
- The Living Wage Ordinance applies.

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

April 2, 2024

Mr. Joseph E. Altschul
1911 NW 150th Avenue, Suite 203
Pembroke Pines, Florida 33028

Re: Contract Number EVN0000638 - Garbage Collection and Disposal Services

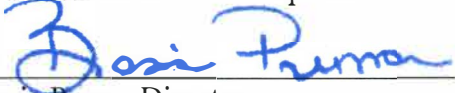
Dear Mr. Altschul:

Forwarded for your information is a copy of the Findings and Recommendation filed by Judge Joseph Davis, Hearing Examiner, in connection with the bid protest hearing, held on Wednesday, March 20, 2024.

Should you have any questions regarding this matter, please do not hesitate to contact Daysha McBride at 305-375-1293.

Sincerely,

Juan Fernandez-Barquin
Clerk of the Court and Comptroller

By 
Basia Pruna, Director
Clerk of the Board Division

Attachment

BP/dmcb

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)
Dr. Carladenise Edwards, Chief Administrative Officer, Office of the Mayor (via email)
Geri Bonzon-Keenan, County Attorney, CAO (via email)
Gerald Sanchez, First Assistant County Attorney, CAO (via email)

MDC004

Mr. Altschul
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Eduardo Gonzalez, Assistant County Attorney, CAO (via email)
Rochelle Hall, Assistant County Attorney, CAO (via email)
Clara Pimentel, Director Agenda Coordinator, CAO (via email)
Elizabeth Alfonso Ruiz, Paralegal Specialist, CAO (via email)
Donna Hadeed, Paralegal Specialist, CAO (via email)
Adeyinka Majekodunmi, Commission Auditor, OCA (via email)
Namita Uppal, Chief Procurement Officer, ISD (via email)
Lydia Osborne, Assistant Department Director, SPD (via email)
Natalya Vasilyeva, Procurement Contracting Manager, SPD (via email)
rene@aesportable.com, A.E.S. Portable Sanitation, Inc (via email)
amanda@great-waste.com, Great Waste & Recycling Service, LLC (via email)
marrero@wm.com, Waster management, Inc (via email)

**CLERK OF THE BOARD OF COUNTY COMMISSIONERS MIAMI-DADE COUNTY,
FLORIDA**

In re: PM - EVN0000638
Garbage Collection & Disposal
Services for MDAD
Bid Protest of Great Waste &
Recycling Services, LLC

FINDINGS AND RECOMMENDATIONS OF HEARING EXAMINER

(Pursuant to Section 2-8.4 of Miami-Dade County Code and Implementing Order No.: 3-21)

This matter was heard before the undersigned Hearing Examiner on March 20, 2024 beginning at 10:00 a.m. at the Stephen P. Clark Center, 111 N.W. First Street Suite 17-202, Miami, Florida 33128, upon the bid protest filed by Great Waste & Recycling Services LLC (“**Great Waste**”) to the Miami-Dade County (“**County**”) Mayor’s recommendation to award Contract No. EVN0000638 (“**Contract**”) to Waste Management Inc. of Florida (“**Waste Management**”). Based on the request of the Parties for additional time to submit competing proposed findings and recommendations, these Findings and Recommendations, with the agreement of the Parties, is not filed within the time frame provided for in Miami-Dade County Implementing Order No.: 3-21. In making these Findings and Recommendations, the undersigned Hearing Examiner (a) considered Great Waste’s written protest and supporting documents and evidence appended thereto, the County Mayor’s or issuing department director’s recommendation and supporting documentation, and all evidence presented at the hearing; (b) considered the County’s Pre-Hearing Brief and Memorandum of Law including supporting authorities, and (c) considered arguments by counsel and the live testimony of the following individuals at the hearing: Carlo Piccinonna, managing member of Great Waste; Pablo Martinez, the County’s procurement contracting officer; and Natalya Vasilyeva, the County’s procurement contracting manager. The issue for determination here is whether the County acted in an illegal,

dishonest, fraudulent, or arbitrary manner in recommending the award of the Contract to Waste Management as the lowest responsive and responsible bidder. *See Liberty Cty. v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). In making this determination, I must evaluate two (2) issues upon which Great Waste based its bid protest: (1) whether Waste Management's alleged failure to submit its bid based on the correct unit of measure stated by the County in its solicitation for the Contract made Waste Management's bid non-responsive, and (2) whether the County improperly revised its bid tally to the benefit of Waste Management. I must also determine whether the legal or factual grounds for the protest are frivolous and consider whether or not the protest is supported by material facts necessary to establish the claim, or if the claim is supported by the application of then-existing law to those facts. Based on the evidence presented by the County and Great Waste as well as relevant case law cited herein, I find that the County *did not* act in an illegal, dishonest, fraudulent, or arbitrary manner in recommending the award of the Contract to Waste Management as the lowest responsive and responsible bidder. I also find that the legal grounds for the protest are frivolous and that the claim is not supported by the application of then-existing law to the material facts. Thus, I concur in the County Mayor's recommendation to award the subject Contract to Waste Management, and I therefore recommend that Great Waste's bid protest be **DENIED**.

FINDINGS OF FACT

1. On August 22, 2023, the County advertised its Invitation to Bid for Solicitation EVN0000638 ("**Solicitation**") for garbage disposal services for the County's Aviation Department *See* Preliminary Tally Sheet, Joint Exhibit A ("**Preliminary Tally Sheet**").¹

2. Though the Solicitation contained sixty-six (66) line items, certain line items included multiple trash containers: line items 8, 50, 60, and 65. For line items 8, 50, 60, and 65,

¹ All Joint Exhibits cited herein were presented at the Bid Protest Hearing.

the Solicitation provided an “estimated annual pickup quantity per container.” *See* Solicitation § 3.3, Joint Exhibit E (“**Solicitation**”). The Solicitation also listed the number of containers for each of these line items; line item 8, for example, is for six (6) containers, each container to be picked up 730 times annually. *See id.* & Addendum No. 3 to the Solicitation.

3. On August 31, 2023, the County held a “PRE-BID CONFERENCE MEETING (HIGHLY RECOMMENDED)” which allowed potential Bidders to ask questions about the terms and conditions of the Solicitation. *See* Solicitation § 2.3.

4. The Solicitation also allowed all potential bidders to submit written questions, answers to which were provided via Addendum No. 2 of the Solicitation. *See* Solicitation Addendum No. 2.

5. On direct examination, Carlo Piccinonna, Great Waste’s managing member, conceded he did not submit any written questions on behalf of Great Waste. *See* Bid Protest Transcript 36:7-10. Transcripts of the proceeding are attached as Exhibit 1.

6. A potential bidder asked the County to clarify what the phrase “when all items are added in the aggregate” meant as stated in Section 2.4 – METHOD OF AWARD – of the Solicitation. *See* Solicitation, Addendum No. 2, Question 12.

7. In response, the County stated

As it pertains to Section 2.4, of the subject solicitation, entitled Method of Award, the statement “when all items are added in the aggregate” means that the County will sum the total bid amount to determine the lowest bid price. The County will multiply the unit price bid by the estimated annual pick up quantity to determine *the total price per item*. The County will then add the total price for all line items, to determine the aggregate total amount of the bid.

Id. (emphasis added).

8. The Solicitation sought the price per pickup per item contained in the Solicitation.

9. This was clarified in Addendum No. 3 to the Solicitation. In Addendum No. 3, the County again reiterated it was seeking pricing based on “Estimated Annual Pickup quantity Per container”, instead of asking bidders to price the pickup for all containers at each location. *See Solicitation at Addendum No. 3*

10. Prior to submission of its bid, Great Waste acknowledged receipt of all Addenda to the Solicitation including Addendum No. 3 which updated the County’s estimated annual pickup quantity per container. *See id.* Based on the record, including testimony of Mr. Martinez and Ms. Vasilyeva, the County interprets the phrase “per item” to mean the specified Item Quantity noted within Section 3.3 – SERVICE LOCATIONS/LEVELS – and Addendum No. 3 of the Solicitation and thus sought the price per pickup *per container* for all line items within the Solicitation.

11. Mr. Piccinonna testified that he “determined” that the Solicitation asked bidders to provide a price per pickup of *all* containers within the Solicitation. *See Bid Protest Tr.70:22 – 25, 71:1 – 4.* Great Waste submitted its bid for each line item as if the line item was seeking a cumulative price for removing all containers at each location, rather than a price for removing each individual container or item at each location. *See id. 37:7 – 11.*

12. The County received three bids in response to the Solicitation – one from A.E.S. Portable Sanitation, Inc. (\$121,289,763.75), one from Great Waste (\$4,515,715.48), and one from Waste Management (\$1,952,626.54). *See Joint Exhibit B.* The Undersigned is mindful that Great Waste argues that its bid was actually \$1,989,359.48 and that the County vastly and erroneously inflated its bid to \$4,515,715.48 as noted in Joint Exhibit B.

13. According to the testimony, the County’s procurement contracting officer, Mr. Martinez, along with his supervisor, Ms. Vasilyeva, reviewed Waste Management’s submission

and determined that Waste Management's Bid was responsive. *See* Bid Protest Tr. 158:15 – 19. It contained all required executed forms and affidavits and obligated Waste Management to perform the Contract's requirements. *See id.*

14. According to the testimony, once the Solicitation closed on October 6, 2023, the bids were calculated by multiplying the unit price per item, provided by each bidder, by the estimated annual pickup quantity for each item. *See* Bid Protest Tr. 114:23 – 25, 115:1 – 2.

15. Waste Management was determined by the County to be the low bidder after this initial calculation. *See* Preliminary Tally Sheet. However, under the County's process, this initial determination was then vetted through several layers of review, to ensure that the County's analysis was correct. *See* Bid Protest Tr. 163: 4 – 22.

16. Shortly after the County's calculation, Great Waste requested the bidder ranking via a public records request. *See id.* 158:23 – 25, 159:1 – 5, *see also* Joint Exhibit D – Correspondence between Mr. Martinez and Mr. Piccinonna.

17. In response to the public records request, on November 6, 2023, Mr. Martinez provided Great Waste with the Preliminary Tally Sheet.² *See* Joint Exhibit D. According to the testimony, the Preliminary Tally Sheet was not the County's final product and was at that point only an internal document. *See* Bid Protest Tr. 82:16 – 24. It had not been filed with the Clerk or mailed to the bidders, as the final award document must be.

18. After receipt of the Preliminary Tally Sheet, according to the testimony, Great Waste advised Mr. Martinez that it believed that Waste Management did not calculate their bid as directed. *See* Joint Exhibit D. In addition, Great Waste provided Mr. Martinez with the math

² According to the testimony, pursuant to Chapter 119, Florida Statutes, the County must produce public records, such as its internal communications, to the public upon request, subject to limitations that are not relevant in this case.

that Great Waste utilized to calculate its bid and the math that it believed should be used to calculate Waste Management's bid. *See id.*

19. In support of its argument, Great Waste also provided Mr. Martinez with an *edited version* of the Preliminary Tally Sheet that included a different method of calculation for Waste Management's bid. *See Joint Exhibit C – Edited Tally Sheet.* Ms. Vasilyeva testified that the County calculated all bids in the same manner and is not allowed to apply different calculation methods to the same pool of bidders. *See Bid Protest Tr. 165:14-25; 167:1.*

20. According to the testimony, on or about November 17, 2023, to ensure that the calculations conducted corresponded with the Solicitation requirements and to provide the County's Aviation Department with an accurate representation of the costs of the requested services, the Preliminary Tally Sheet was updated. *See Joint Exhibit B – Finalized Tally Sheet.* According to the testimony, for this update, each bidder's submission was calculated by multiplying the unit price by the estimated annual pickup quantity by the item quantity. *See id.* According to the testimony, this calculation was done in the exact same manner for *each* bidder. *Id.* Mr. Martinez testified that this update had nothing to do with Great Waste's assertions made on November 6, 2023. *See Bid Protest Tr. 103:9 – 14.*

21. Mr. Martinez testified that there are typically multiple versions of a tally sheet as bid submissions are reviewed and evaluated. *See id. 84:5 – 14.*

22. According to the testimony, Waste Management remained the low bidder at this stage of the review process. *See Joint Exhibit B.* Ms. Vasilyeva testified that Waste Management's bid was reasonable when compared with the current contract prices for the services sought in the Solicitation. *See id. 163:23 – 25, 164:1 – 3.*

23. According to the testimony, Mr. Martinez and Ms. Vasilyeva also determined that Waste Management is a responsible bidder. *See id.* 158:17 – 21.

LEGAL STANDARDS

In *Dep't of Transp. v. Groves-Watkins Constr.*, 530 So.2d 912, 913 (Fla. 1988), the Florida Supreme Court stated: “A public body has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of this discretion will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree.” Thus, neither hearing examiners nor judges may overturn or second guess the judgment of government employees or elected officials as to the merits or wisdom of a procurement decision. *See Miami-Dade Cty v. Church and Tower, Inc.*, 715 So.2d 1084, 1089 (Fla. 3d DCA 1998) (“So long as such a public agency acts in good faith, even though they may reach a conclusion on facts upon which reasonable men may differ, the courts will not generally interfere with their judgment, even though the decision reached may appear to some persons to be erroneous.”).

To the contrary, a recommendation may only be overturned if arbitrary, capricious or the product of dishonesty, fraud, illegality, oppression or misconduct. *See Baxter's Asphalt & Concrete, Inc.*, 421 So.2d 505, 507 (Fla. 1982). Accordingly, the core tenet of bid protest hearings provides that “the hearing officer’s sole responsibility [in reviewing a protest] is to ascertain whether the agency acted fraudulently, arbitrarily, illegally or dishonestly.” *Dep't of Transp. v. Groves-Watkins Constr.*, 530 So.2d 912, 914 (Fla. 1988). The County’s action may be considered arbitrary if it is not supported by facts or logic. *See Agrico Chemical Co. v. Dep't of Env't. Regulation*, 365 So.2d 759, 763 (Fla. 1st DCA 1978). The County’s action may be considered arbitrary if it is taken without thought or reason or with irrationality. *Id.* Therefore, a

protester attempting to overturn a contracting entity's decision on arbitrariness bears a very high burden because, "the test is 'whether the contracting agency provided a coherent and reasonable explanation of its exercise of discretion, and the disappointed bidder bears a 'heavy burden' of showing that the award decision had no rational basis.'" *Banknote Corp. of Am., Inc. v. U.S.*, 365 F.3d 1345, 1351 (Fed. Cir. 2004) (citing *Impresa Costruzioni Geom. Domenico Garufi v. U.S.*, 238 F.3d 1324, 1332 (Fed. Cir. 2001)).

A responsive proposal "is submitted on the correct forms, and contains all required information, signatures and notarizations." *Intercontinental Prop., Inc. v. State Dep't of Health and Rehab. Servs.*, 606 So.2d 380 (Fla. 3d DCA 1992). A bid is not responsive if it cannot form the basis of a contract, or if it contains deviations which provide the bidder with a material advantage over other bidders. *Robinson Elec. Co., Inc. v. Dade Cty*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). Whether a bid is responsive concerns a bidder's unequivocal promise, as shown on the face of its bid, to provide the items or services called for by the material terms of the bid. *Intercontinental Properties, Inc. v. Fla. Dep't. of Health and Rehab. Serv.*, 606 So. 2d 380, 381 (Fla. 3d DCA 1992). In discussing responsibility and bid responsiveness, the Comptroller General stated: "Unless something on the face of the bid limits, reduces or modifies the obligation of a prospective contractor to perform in accordance with the terms of the invitation, the bid must be considered responsive." *Comptroller General to the Secretary of the Army*, 1973 WL 8799 (Comp. Gen. 1973) (citations omitted).

CONCLUSIONS OF LAW

Based upon due consideration of the testimony of the witnesses, exhibits, law, argument of counsel and foregoing findings, I find that the County did not act in an illegal, dishonest, fraudulent, or arbitrary manner in recommending the award of the Contract to Waste

Management as the lowest responsive and responsible bidder. I also find that the legal grounds for the protest are frivolous and that Great Waste's claim is not supported by the application of then-existing law to the material facts.

Waste Management's Bid is Responsive

Great Waste's first ground for protest alleges that for line items 8, 50, 60, and 65, Waste Management's "bid was nonresponsive because its bid was based upon either the wrong "unit of measure" (price per pickup per container) or the wrong number of containers (one), resulting in an erroneous bid." *See* Protest Letter at p. 1 – 5. In short, Great Waste asks that I read the Solicitation documents contrary to the County and find that the Solicitation mandated that Waste Management submit a bid based—not on a price per pickup for a container—but instead on a price to pickup all containers at a location.

Great Waste's argument, however, is inconsistent with the Solicitation. Addendum No. 2 continued to reflect that the County would multiply "unit price bid by the estimated annual pick up quantity to determine *the total price per item*." *See* Solicitation at Addendum No. 2, Question 12. Given that the Solicitation reflected that certain lines included multiple items, I find that the County continued to seek a price per container/item. This is confirmed by Addendum No. 3, which refers to pickups per container. I further find that the Solicitation documents do not support the argument put forth by Great Waste.

Moreover, my task here is not to determine the best way to read the Solicitation, but rather to determine if the County's determination is arbitrary, fraudulent, dishonest, or illegal. *See Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d at 507; *see also Dep't of Transp. v. Groves-Watkins Constr.*, 530 So.2d 912, 914 (Fla. 1988). Indeed, even if I were to conclude that Great Waste's interpretation was reasonable, I would be bound to rule for the County. *See Miami-*

Dade Cnty. v. Church and Tower Inc., 715 So. 2d 1084, 1089 (Fla. 3d DCA 1998). Given the full text of the Solicitation, including all Addenda, I cannot conclude that the County's determination that the Solicitation asked for bids priced on a per container/item basis is arbitrary, fraudulent, dishonest, or illegal.

Lastly, Great Waste's determination regarding what the Solicitation meant is not dispositive here. Especially because the record evidence and testimony indicated that Great Waste had ample opportunity to ask clarifying questions – but failed to do so. It was reasonable for the County to believe that the Solicitation language sought the price per pickup per container for all line items therein. This is especially true for line items 8, 50, 60, and 65 which contained multiple trash containers at those specified locations.

In short, neither Great Waste's protest letter, argument of its counsel, nor testimony of Mr. Piccinonna established that the County acted in an illegal, dishonest, fraudulent, or arbitrary manner with its interpretation. Great Waste's issue then seems to simply be a disagreement between what it determined the Solicitation was asking for and what the Solicitation was actually asking for. Even if I found Great Waste's confusion regarding the Solicitation requirements credible, it is clear that under well-established law and the County Code, the one thing a Hearing Examiner cannot do is replace his or her discretion for that of the County, regardless of whether or not I think the County staff reached a wrong result. Therefore, I find that this disagreement between the Parties is not enough to amount to illegal, dishonest, fraudulent, or arbitrary behavior by the County.

County's Update to its Tally Sheet Was Not Arbitrary, Illegal, Fraudulent, Or Dishonest

Next, Great Waste argued that the County's update to its Tally Sheet, by adding an additional "Item Qty" column, was done to make Waste Management's submission responsive to

the detriment of Great Waste's bid price. In response, according to testimony, the County noted that there are multiple variations and drafts of a bid tally sheet throughout the review process and that the update was done to ensure that the formula used reflected the terms of the Solicitation. Like with its first argument, neither Great Waste's protest letter, argument of its counsel, nor testimony of Mr. Piccinonna, allege that the County acted in an illegal, dishonest, fraudulent, or arbitrary manner when making this update to the Preliminary Tally Sheet.

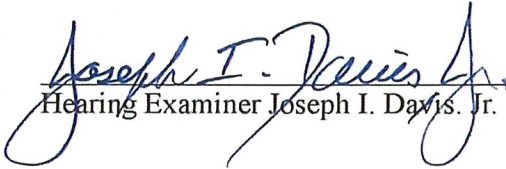
The County did not dispute that the Preliminary Tally Sheet was updated to include another "Item Qty" column. But, the clear testimony of the County employees was that the Preliminary Tally Sheet was always going to be updated with the Item Quantity line, in order to establish the extended pricing. *See* Bid Protest Tr. 84:5 – 14; 124:9 – 25, 125:1 – 5. I find there was nothing nefarious about the County ultimately doing what it was always planning to do.

Instead, Great Waste seems to be suggesting that the County calculate Waste Management's bid by multiplying by the number of containers, but not calculate Great Waste's bid in the same manner. But this, as noted by Ms. Vasilyeva, is something that the County cannot do. *See* Bid Protest Tr. 164:19 – 25, 165:1 – 6; *see also Hotel China & Glassware v. Bd. of Pub. Instruction of Alachua Cty.*, 130 So. 2d 78 (Fla. 1st DCA 1961). Great Waste did not provide any factual basis or record evidence that would allow me to find that the County's update to the Preliminary Tally Sheet was anything more than standard business practices. The County cannot calculate Great Waste and Waste Management's bids differently, and I find the County properly applied the same methods of calculation to both bidders. Thus, I find that the County did not act in an illegal, dishonest, fraudulent, or arbitrary manner when updating the Preliminary Tally Sheet.

CONCLUSION

The record demonstrates that the County acted in good-faith and had a rational basis in recommending Waste Management for award of the Contract. The record also demonstrates that the County did not act in an arbitrary, illegal, dishonest, or fraudulent manner when interpreting the Solicitation, reviewing the submissions, or updating its Tally Sheet. Therefore, I concur in the County Mayor's recommendation to award the subject Contract to Waste Management, and I therefore recommend a denial of Great Waste's bid protest.

Dated: APRIL 1, 2024


Hearing Examiner Joseph I. Davis, Jr.



MEMORANDUM

(Revised)

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

DATE: May 7, 2024

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)
5-7-24

RESOLUTION NO. R-406-24

RESOLUTION APPROVING AWARD OF CONTRACT NO. EVN0000638 TO WASTE MANAGEMENT INC. OF FLORIDA FOR THE PURCHASE OF GARBAGE COLLECTION AND DISPOSAL SERVICES FOR THE MIAMI-DADE AVIATION DEPARTMENT IN AN AMOUNT NOT TO EXCEED \$11,715,760.00 FOR A FIVE-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD TO THE RECOMMENDED VENDOR, ISSUE THE APPROPRIATE PURCHASE ORDERS TO GIVE EFFECT TO SAME AND EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION 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. EVN0000638 to Waste Management Inc. of Florida for the purchase of Garbage Collection and Disposal Services for the Miami-Dade Aviation Department in an amount not to exceed \$11,715,760.00 for a five-year term; and authorizes the County Mayor or County Mayor's designee to give notice of this award to the recommended vendor, issue the appropriate purchase orders to give effect to same and exercise all provisions of the contract, including any cancellation 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 Strategic Procurement Department.

The foregoing resolution was offered by Commissioner **Eileen Higgins**,
 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 7th day of May, 2024. 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.

DMM

David M. Murray
 Rochelle A. Hall