

MEMORANDUM

Agenda Item No. 8(P)(1)

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

DATE: March 5, 2024

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution rejecting all proposals received in response to Request for Proposals No. EVN0000380 for Turnkey Advanced Metering Infrastructure (AMI) Solution and authorizing the County Mayor to continue the procurement process with the four proposers in order to bring back a designated purchase contract award recommendation for the Board's consideration

Resolution No. R-184-24

The accompanying resolution was prepared by the Strategic Procurement Department and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum



Date: March 5, 2024

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

From: Daniella Levine Cava
Mayor

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

Subject: Recommendation for Approval to Reject All Proposals, Continuance of Procurement Process, Evaluate Proposals and Bring back an Award of a Designated Purchase for Turnkey Advanced Metering Infrastructure (AMI) Solution

Summary

This item is for the rejection of all proposals received in response to a competitive Request for Proposals (RFP), and authorization for the continuance of the solicitation process with the evaluation of four proposals: the three proposals received by the proposal due date and an additional proposal submitted to the County after the due date through alternate means. Upon completion of the evaluation and negotiation with the highest ranked proposer, a designated purchase award will be presented to the Board of County Commissioners (Board) for the purchase of a turnkey Advanced Metering Infrastructure System for the Miami-Dade County Water and Sewer Department (WASD).

The contract will provide the services of a contractor to convert the existing water meter reading system to a "state of the art" Turnkey Advanced Metering Infrastructure (AMI) Solution (Solution) that leverages smart water meters to improve the County's water operations that allows for future expansion. The Solution will include all hardware, cloud-based software, equipment, materials, technical labor, installation labor, related services including testing, supervision, project management and all other items necessary to install an integrated turnkey solution for the County. WASD requires a fully cloud-based and fully integrated turn-key Solution based on a Network-as-a-Service operational model to provide the County with comprehensive monitoring, reporting, and auditing capability to facilitate and optimize user and customer functionality.

Recommendation

It is recommended that the Board approve this request to reject all proposals received in response to *RFP No. EVN0000380, Turnkey Advanced Metering Infrastructure (AMI) Solution*, and authorize the continuance of the solicitation process, to resume with the evaluation of four proposals and negotiation with the highest ranked proposer. Upon completion of the evaluation and negotiation, a recommendation for award via a designated purchase will be brought back for the Board's consideration.

Approval of a designated purchase, by a two-thirds vote of the Board members present, will be requested pursuant to Section 2-8.1(b)(3) of the Miami-Dade County Code to authorize a twenty-year contract. The anticipated contract amount is \$250,000,000.

Background

A competitive RFP was advertised under full and open competition on May 1, 2023 to procure the Solution. Three proposals were received on the due date of August 28, 2023. On October 13, 2023, the Strategic Procurement Department (SPD) requested a responsiveness opinion from the County Attorney's Office (CAO) regarding proposals submitted by three proposers: Badger Meter, Inc. (Badger), Consolidated Pipe and Supply Co. (Consolidated), and Core & Main, LP (Core). The CAO issued its legal opinion that Badger and Core's proposals were both non-responsive, and Consolidated's proposal was non-compliant and ineligible for award. Badger and Core were found to have conditioned their proposal with alternative pricing that was deemed to be a material deviation from the solicitation. Consolidated only submitted pricing and failed to submit a technical proposal along with some required forms. Additional consideration is requested for the evaluation of a proposal from Aclara Technologies, LLC (Aclara). Aclara informed the County its proposal was prepared, but was not submitted before the

proposal due date. On August 31, 2023, Aclara sent a link to County staff requesting to download the proposal from the link and consider it for evaluation. Aclara states its proposal has not been changed since the proposal due date. Staff has not downloaded or reviewed Aclara's proposal. In order to maximize competition, the acceptance and evaluation of Aclara's proposal is requested.

Upon approval of this request, all proposals will be rejected and the County will proceed with the evaluation of proposals submitted by Badger, Core, Consolidated, and Aclara. Upon completion of the evaluation process, the County will proceed to negotiate with the highest ranked proposer. The four proposals will be evaluated in accordance with the criteria published in the RFP and any exceptions taken by the proposers will be evaluated by the Competitive Selection Committee. Additionally, through the negotiation process, exceptions will be addressed to ensure a best value award for the County.

Alternatively, the County can reject and resolicit; however, resoliciting would cause unnecessary delays in the implementation of the Solution. Prior to advertisement, WASD, in partnership and collaboration with other County departments, went beyond routine due diligence to ensure a complete, objective, and fair solicitation to obtain competitive proposals from all qualified candidates. As presented below, this thorough process took over a year to complete, and involved market research, industry presentations, an industry comment period on the draft RFP, meetings with all interested parties, and multiple third-party reviews:

- March 2022 – Presentations and market research meetings with prospective proposers
- July to August 2022 – Development of preliminary draft RFP
- August 2022 – Industry Meeting to review RFP and solicit comments from industry
- September to October 2022 – Address comments and develop draft RFP
- November 2022 – Independent review of draft RFP by WASD's Bond Consultant
- November 2022 – RFP workshops with WASD, Bond Consultant, SPD, and Office of the Inspector General (OIG)
- November 2022 – Meetings with the Information Technology Department (ITD) to review integration requirements and alignment with other County systems
- December 2022 – Site visit to Miami Beach to review their AMI solution
- January 2023 – Meeting with SPD and WASD to review updated draft RFP
- February & March 2023 – Meetings with prospective proposers
- March 2023 – Final page-turn review of RFP with SPD and WASD
- May 2023 – Presentation of final RFP to OIG
- May 2023 – Advertisement of the RFP
- May 2023 – Pre-Proposal Conference with prospective proposers
- August 2023 – Proposals received

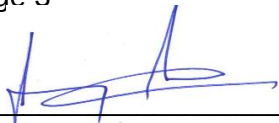
By resoliciting, with the received proposals now public record, the County would put these proposers at a disadvantage, giving potential new proposers the opportunity to review their approach and prices. This would undermine the extensive effort put forward by the County to ensure a fair and competitive solicitation prior to advertisement.

Therefore, in consideration of WASD's operational need to advance its metering service and that the proposals received are from companies deemed to be leaders in providing the Solution, the re-solicitation of the Solution would not yield any tangible benefit to the County.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee is authorized to continue the procurement process with the four proposers in order to bring back a designated purchase contract award recommendation for the Board's consideration.

Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners
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Jimmy Morales
Chief Operations Officer

Memorandum



Date: November 13, 2023

To: Brian Webster, CPPO
Procurement Contracting Officer
Strategic Procurement Officer

From: Angela F. Benjamin
Assistant County Attorney

Subject: Responsiveness Opinion for RFP No. EVN0000380, Turnkey Advance Metering Infrastructure (AMI) Solution (the Solicitation)

On October 13, 2023, you asked this office if proposals submitted by three proposers, Badger Meter, Inc. (Badger), Consolidated Pipe and Supply Co. (Consolidated), and Core & Main, LP (Core) for the Solicitation referenced above can be considered responsive to the Solicitation. We asked for additional information from you and received all the necessary information on or before October 23, 2023.

Because the value of the contract involved exceeds \$1 million, we are providing this formal responsiveness opinion.

For the reasons described below and based on the facts provided in your October 13, 2023 memorandum, the Solicitation, and the additional information received on and before October 23, 2023, Badger and Core's proposals are both non-responsive and Consolidated's proposal is non-compliant and ineligible for award. Please note that the below opinion is based solely on the information provided by you. This office has not conducted an independent assessment of the proposals received. If new or additional information is discovered, this opinion may change.

FACTS

The Solicitation sought proposals for a state-of-the-art turnkey Advanced Metering Infrastructure (AMI) Solution to support Miami-Dade Water and Sewer Department's (WASD's) operations. Currently, WASD's meter infrastructure incorporates a combination of manually read meters with readings captured via handheld reading devices. The AMI solution will convert the current meter reading system to a system that leverages smart devices to improve WASD's operations.

Section 1.3 of the proposal specifically provides:

The County may, at its sole and absolute discretion, reject any and all or parts of any or all Proposals; accept parts of any and all Proposals; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the Proposals received as a result of this process. **In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its Proposal. 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.**

The Proposer's Proposal will be considered a good faith commitment by the Proposer to negotiate a contract with the County, in substantially similar terms to the Proposal offered and, if successful in the process set forth in this Solicitation and subject to its conditions, to enter into a Contract substantially in the terms herein.

In addition, the Solicitation requires the submission of certain affidavits and certificates by each proposer. For example, each proposer is required to submit a Certificate of Assurance for Small Business Participation on County Projects ("SBD Certificate of Assurance") (attached to the Solicitation as Attachment K). That form specifically provides that, "[t]his completed form must be submitted with bid documents by all bidders/proposers on a Miami-Dade County project with Small Business Enterprise ("SBE") program measure(s)." At the bottom of Attachment K, the particular proposer must attest that it understands that it **"will be deemed non-compliant and not eligible for award if [it] fail[s] to . . . submit the form with [its] bid/proposal documents[.]"** See Solicitation at Attachment K (emphasis added).

Attachment B of the Solicitation provides the proposal price schedule for proposers to use in their submissions. The instructions for Attachment B provide that "unit prices shall be inclusive of all labor, material, equipment, overhead, profit, and out-of-pocket expenses required to furnish and install items identified." Attachment B further states that, "[t]he Total Proposal Price shall represent the Proposer's total price offer to the County. The Proposer, if awarded a contract, shall not be entitled to an amount for compensation in excess of the Total Proposal Prices."¹

Here, three proposers timely submitted proposals in response to the Solicitation: Badger, Consolidated, and Core.

In the Assumptions section of its proposal, Badger makes at least one relevant statement. In particular, Badger provides that the prices listed in its proposal are "subject to change based on advisement from the County of different applicable responsible wage requirements." Badger's proposal also provides that,

[l]abor costs in this Base Bid Option 1 reflect the use of union labor performed by LiUNA!. The wage rate used is subject to confirmation by the County that this rate complies with applicable Responsible Wage law. Finally, pricing for labor costs are subject to change based on any changes imposed by the County with respect to (i) mandate that a different responsible wage rate be used for a particular task and/or (ii) increase in applicable responsible wage rate for a particular trade or trade(s) being used as part of this proposal.²

Although Badger submitted 3 different alternate options, each one was "subject to the specific assumptions" listed by Badger in the assumptions sections of each alternate option. See Badger proposal at Disclosures (page 8 of the proposal).

¹ A draft form agreement is also included as an attachment to the Solicitation. Article 9 of that draft form agreement specifically provides that, "[u]nit prices shall remain fixed for the term of the Contract." Article 9 emphasizes this point by stating that, "[t]he Contractor's prices shall be inclusive of all costs, delivery, charges, and fees. Additional charges of any kind will not be accepted."

² Each of Badger's alternate proposal options include similar language with respect to the potential fluctuation in labor costs over the life of the agreement.

Consolidated's proposal was particularly scant. It included the Proposal Price Schedule and the 2 web forms required by the system for the document to be submitted. Consolidated's proposal failed to include a proposal response or SBD Certificate of Assurance, among other missing items.

Core's proposal included a page entitled "Exceptions" in which it provided that its bid is "**made expressly conditioned upon assent by**" the County "**to the following additional or different terms, which shall supersede and control over the terms of any request for bid or request for proposal**, any contract documents and specifications, and any prior addenda thereto." Core then listed a number of specific provisions different than those in the Solicitation that it conditioned its bid on acceptance of, including but not limited to, the insurance and purchase option provisions. Core's proposal also "reserve[d] the right to negotiate contract terms and conditions mutually agreeable to both parties" and then identified 27 provisions it wishes to negotiate, including order of precedence, contract term, pricing and method and timing of payment, and indemnification and insurance, among others. In addition, Core's proposal "reserve[d] the right to increase costs to reflect increases in the County's Wage and Benefits Schedule during the project, or if Miami-Dade's Living Wage increases."

The responsiveness of each proposal is discussed below.

DISCUSSION

The operative question presented in your inquiry is whether the proposers attempted to reduce, limit, or modify a material solicitation requirement and make their bids conditional and therefore nonresponsive. "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 [RFP'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).

This is the framework under which we evaluate the responsiveness of each of the proposals.

Badger

Badger's proposal provides that certain components of its pricing are "subject to change" based on adjustments to the responsible wages law. In its proposal, Badger specifically provides that each of its 3 alternate bids were "subject to the specific assumptions" included in Badger's proposal, including the variation in price due to adjustments in responsible wages. "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 [solicitation's] material terms and conditions.'" *Monument Realty LLC*, 535 F. Supp. 2d at 74 (quoting *In re: Walashek Indus. & Marine*, B-281577, 99-1 CPD ¶ 30, 1999 WL 43510, *1, (Comp. Gen. Jan. 29, 1999)). A vendor's qualification of a bid may render it non-responsive, depending on whether the County is deprived of the assurance that the contract would be entered into, performed, and guaranteed according

to its specific requirements. *See Glatstien*, 399 So. 2d at 1005. If a qualification has a clear and demonstrable effect on the amount of the bid, it is a material deviation that cannot be waived. *Harry Pepper & Assocs., Inc.*, 352 So. 2d at (“The test for measuring whether a deviation in a bid is sufficiently material to destroy its competitive character is whether the variation affects the amount of the bid by giving the bidder an advantage or benefit not enjoyed by the other bidders.”). It is well established that responses to a solicitation must be capable of assuring the County that, if accepted, the proposal will result in a contract that can be performed in accordance with the requirements of the solicitation. *Glatstein*, 399 So. 2d at 1007-1008. It is also well established that price is a material term of a contract. *See, e.g., Let Miami Beach Decide v. City of Miami Beach*, 120 So. 3d 1282, 1291 n.6 (Fla. 3d DCA 1282) (collecting authority for the proposition that the price term is among the information that “constitutes the essential minimum” to enter a contract).

Here, for similar reasons described below with respect to Core & Main’s proposal, Badger’s proposal has qualified or conditioned its proposal with respect to pricing. Badger does not simply assume that the responsible wages laws may change and factor that into their pricing proposal, it has specifically provided that each of its alternates are **subject to** the assumptions listed in Table C6, including the potential that the labor costs could fluctuate depending on changes in the responsible wages laws. Such conditioning not only makes it difficult to impossible for the County to compare Badger’s proposal with other proposers in a fair way, but also deprives the County of assurance that a contract would be entered into and performed in accordance with the requirements of the Solicitation. *See Glatstein*, 399 So. 2d at 1007-08. Accordingly, Badger’s proposal is non-responsive.³

Consolidated

Consolidated’s proposal is missing several items. One of those items – the SBD Certificate of Assurance – is determinative as to Consolidated’s participation in this Solicitation. The Form itself (Attachment K) provides that if the proposer fails to submit the form with its proposal, it will “be deemed non-compliant and not eligible for award[.]” Irrespective of any potential responsiveness issues, which are not analyzed in this opinion, Consolidated’s failure to include the SBD Certificate of Assurance with its proposal renders the proposal non-compliant and not eligible for award.

Core

Core’s proposal went beyond taking exceptions to requirements of the Solicitation. Core made its proposal expressly conditioned upon the County accepting explicit changes to various required provisions and allowing those revised terms to supersede and control over the terms of any other item in the Solicitation or proposed draft form contract. Core then identifies 27 provisions of the County’s form draft contract that it wishes to negotiate, including payment, indemnification and contract term, among others.

³ Although according to Badger’s assumptions, its Base Bid Option 1 “reflects the use of union labor performed by LIUNA!,” such information does not change this analysis. LIUNA! or the Laborers’ International Union of North America is not a County entity. The County has no control over the rates identified by LIUNA! or how frequently such rates fluctuate. The Solicitation itself requires that the prices be “inclusive of all labor,” etc. It also provides that the proposal price listed on each proposer’s proposal “shall represent the Proposer’s total price offer to the County.” Here, such fluctuation is directly contrary to this requirement. In addition, the concept that these rates could fluctuate does not provide the County with certainty that a contract would be entered into, performed, and guaranteed according to the specific requirements of the Solicitation.

Core's proposal is nonresponsive due to Core conditioning its proposal on its unilateral changes to the Solicitation's provisions, including the insurance requirements.⁴ Among other statements made in Core's exceptions, Core provides that "Core & Main will not be required to provide Builder's Risk, Professional Liability, or any coverage other than the coverage identified in its certificate of insurance. Cyber liability coverage will be provided by the manufacturer or the entity providing data hosting services." The Solicitation and the draft form agreement identifies the required types of insurance that the awardee is expected to provide here. Included within those requirements is coverage for professional liability in an amount not less than \$2,000,000 for each occurrence and \$4,000,000 in the aggregate and coverage for cyber liability in the same amounts as professional liability coverage. Essentially, Core appears to be requiring the County to agree to either less or no coverage for certain liability in contravention of the Solicitation's requirements. Such deviations are material and render the proposal non-responsive. *See, e.g., Matter of Metric Sys. Corp.*, B-256343, B-256343.2, 94-1 CPD 360, 1994 WL 269809 (Comp. Gen. June 10, 1994) (holding that protestor's exception to the solicitation's indemnification requirement changed the legal relationship between the parties as envisioned by the solicitation and rendered the protestor's bid non-responsive).

Angela Benjamin

Angela F. Benjamin

⁴ As explained in Miami-Dade County's Implementing Order 2-13, some examples "of issues involving responsiveness include . . . and whether a bidder or proposer qualified a response by stating that it would provide something less than what was called for." Here, that is exactly what Core did.



MEMORANDUM

(Revised)

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

DATE: March 5, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(P)(1)

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)(1)
3-5-24

RESOLUTION NO. R-184-24

RESOLUTION REJECTING ALL PROPOSALS RECEIVED IN RESPONSE TO REQUEST FOR PROPOSALS NO. EVN0000380 FOR TURNKEY ADVANCED METERING INFRASTRUCTURE (AMI) SOLUTION AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO CONTINUE THE PROCUREMENT PROCESS WITH THE FOUR PROPOSERS IN ORDER TO BRING BACK A DESIGNATED PURCHASE CONTRACT AWARD RECOMMENDATION FOR THE BOARD'S CONSIDERATION

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

Section 1. Adopts the foregoing whereas clause and incorporates the same here.

Section 2. Rejects all proposals received in response to Request for Proposals No. EVN0000380 for Turnkey Advanced Metering Infrastructure (AMI) Solution and authorizes the County Mayor or County Mayor's designee to continue the solicitation process with the four proposers in order to bring back a designated purchase contract award recommendation for the Board's consideration. 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 **Raquel A. Regalado** , who moved its adoption. The motion was seconded by Commissioner **Sen. René García** 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	absent	Eileen Higgins	absent
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 5th day of March, 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.

A handwritten signature in black ink, appearing to be "AB" followed by a flourish, written over a horizontal line.

Angela F. Benjamin