

Date: December 3, 2024

To: Honorable Chairman Anthony Rodríguez
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Daniella Levine Cava

Agenda Item No. 8(A)(4)

Resolution No. R-1063-24

Subject: Recommendation for Approval to Award a Contract for Replacement of 10 Passenger Boarding Bridges at Concourses D, E, F, G, and H

Summary

As part of my future-ready Modernization in Action Program underway at Miami International Airport (MIA), the Miami-Dade Aviation Department (Aviation Department or MDAD) is replacing 126 Passenger Loading Bridges (PBBs) with new jet bridges. To date, 32 PBB's have been replaced, including two glass-walled bridges at MIA Gates D14 and H17. The aesthetic aspect of the glass PBBs offers air passengers a less confining and a more luxurious experience by providing a view of the airfield as they board or deplane an airliner. In addition to providing a modernistic look, glass bridges are hurricane rated, easier to maintain and are more energy efficient. As such, moving forward, beginning with this contract award recommendation, all future PBBs at MIA will be enclosed in glass in accordance with industry trends.

This item is for the replacement of 10 PBBs at MIA in Concourses D, E, F, G and H. The scope of work provides for the removal and disposal of 10 existing PBBs and for the design, fabrication, transportation and installation of 10 new glass sided PBBs during a term of 350 calendar days for a total compensation amount of \$ 21,554,110.54. The new glass PBBs will include at minimum, drive motor/brake covers, canopies, fixed walkways, baggage chutes, and ground support service equipment at Gates D16, D20, D21, D22, E4, F3, F5, G15, G16 and H14 including the design and installation of new foundations, if required.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, Contract No. EVN0008106, Replacement of 10 Passenger Boarding Bridges in Concourses D, E, F, G, and H to Adelte Ports & Maritime S.L.U (Adelte) in the amount of \$21,554,110.54, which includes a 10 percent contingency allowance in the amount of \$1,796,175.88 and a 10 percent dedicated allowance in the amount of \$1,796,175.88.

Background

On March 20, 2024, an Invitation to Quote (ITQ) was issued under full and open competition to vendors that pre-qualified under Contract No. RTQ-01841-P (RTQ), Passenger Loading Bridges Prequalification Pool, Group 1, which was established by the County in 2021 through Resolution Nos. R-1028-21 and R-1031-21. In response to this competitive solicitation, the County received two (2) submittals on April 17, 2024.

Work on this Contract will include the evaluation of site constraints of each gate location, the conditions affecting the removal of the existing PBBs, securing the building at each gate, power supply and any other physical or material requirement necessary to perform the work. The work will be completed in three phases, Phase 1 – site survey, field analysis and report, Phase 2 – manufacturing, foundation design and retrofit, and Phase 3 – delivery, installation and commissioning of the PBBs.

TK Airport Solutions, Inc., the second lowest bidder, filed a formal bid protest on August 12, 2024. On September 27, 2024, a bid protest hearing was conducted by Judge Joseph Davis (Hearing Examiner). On October 3, 2024, the Hearing Examiner denied the protest and upheld the recommendation to award Adelte based on the evidence presented, the arguments made, and applicable procurement law, which all confirm that the bid protest was not submitted timely resulting in the waiver of the right to protest the award recommendation. The Hearing Examiner's Report and Recommendations is attached as Exhibit A.

Scope

MIA is located within District 6, which is represented by Commissioner Kevin M. Cabrera, however, the impact of this item is countywide as MIA is a regional asset.

Fiscal Impact/Funding Source

The fiscal impact for the 350-calendar day term is \$21,554,110.54. The allocation requested under this Contract includes the replacement of 10 PBBs in Concourses D, E, F, G and H in the amount of \$17,961,758.78, a 10 percent contingency allowance in the amount of \$1,796,175.88, and a 10 percent dedicated allowance in the amount of \$1,796,175.88.

Department	Allocation	Funding Source	Pool Manager
Aviation	\$21,554,111.00	Proprietary Funds	Sylvia Novela
Total	\$21,554,111.00		

Track Record Monitor

MDAD's Procurement Contracting Manager Sylvia Novela will monitor this Contract.

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*	
Adelte Ports and Maritime S.L.U.	Avenida Josep Tarradellas 20 08029, Barcelona, Spain	None	0	Jordi Floreta Pont
			0%	

*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.

Vendor Not Recommended for Award

Vendor	Local Address	Reason for Not Recommending
TK Airport Solutions, Inc.	Yes	Higher than Lowest Bid

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Strategic Procurement Department's (SPD) 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.

Applicability of Ordinances and Contract Measures

- The two percent User Access Program does not apply.
- Small Business Enterprise construction goal applied.
- Responsible Wage Ordinance applied.



Jimmy Morales
Chief Operating Officer

Signature Page
EVN0008106, Replacement of 10 Passenger
Boarding Bridges at Concourses D, E, F, G, and H

**BUDGET
APPROVAL
FUNDS
AVAILABLE:**



DIRECTOR OMB
OFFICE OF MANAGEMENT DATE
AND BUDGET (OMB)
DIRECTOR NM

**APPROVED AS
TO LEGAL
SUFFICIENCY:**



COUNTY ATTORNEY DATE

COUNTY MAYOR OR DATE
COUNTY MAYOR
DESIGNEE

**CLERK
DATE**

DATE

Exhibit A
EVN00008106
Findings and Recommendations

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

October 4, 2024

Joseph Goldstein , Esq.
Shutts & Bowen LLP
201 East Las Olas Blvd., Suite 2200
Fort Lauderdale, FL 33301

Re: Bid Protest of EVN00008106 – Passenger Boarding Bridge Replacement at Concourses
D, E, F, G, and H at Miami International Airport

Dear Mr. Goldstein:

Attached for your review is a copy of the Findings and Recommendation filed by Joseph Davis, Hearing Examiner, in connection with the bid protest hearing, held on Friday, September 27, 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

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)

Joseph Goldstein, Esq.
Shutts & Bowen LLP
Page 2
October 4, 2024

Gerald Sanchez, First Assistant County Attorney, CAO (via email)
Eduardo Gonzalez, Assistant County Attorney, CAO (via email)
David Murray, Assistant County Attorney, CAO (via email)
Clara Pimentel, Assistant Agenda Coordinator, CAO (via email)
Elizabeth Alfonso Ruiz, Paralegal Specialist, CAO (via email)
Kecia Griffin, Paralegal Specialist, CAO (via email)
Adeyinka Majekodunmi, Commission Auditor, OCA (via email)
Ralph Cutié, Aviation Director (via email)
Arlyn Rull Valenciaga, Director's Office Chief of Staff, Aviation (via email)
Basell Binns, Deputy Aviation Director, Aviation (via email)
Barbara Jimenez, Assistant Director, Aviation (via email)
Sylvia Novela, Division Director 2, Procurement & Materials Management, Aviation (via email)
Juliana Manjarres, Aviation Contracts Analyst, Procurement & Materials Management, Aviation (via email)
TK Airport Solutions, Inc. (via email)
Adelte Ports and Maritime S.L.U. (via email)

MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS

TK AIRPORT SOLUTIONS, INC.,

Petitioner,

v.

MIAMI-DADE COUNTY,

Respondent,

and

ADELTE PORTS AND MARITIME S.L.U.,

Intervenor.

In re: Bid Protest of TK Airport Solutions, Inc. of Recommendation of Award re: EVN00008106, Replacement of 10 Passenger Boarding Bridges at Concourses D, E, F, G, and H at Miami International Airport (MDAD-71075-24-JM)

FINDINGS AND RECOMMENDATIONS OF HEARING EXAMINER

The undersigned was designated by the Clerk of the Board of County Commissioners for Miami-Dade County as the Hearing Examiner to rule on the Bid Protest of TK Airport Solutions, Inc. of Recommendation of Award re: EVN00008106, Replacement of 10 Passenger Boarding Bridges at Concourses D, E, F, G, and H at Miami International Airport (MDAD-71075-24-JM) (the “Bid Protest Proceeding”). A hearing was conducted on September 27, 2024 at the Stephen P. Clark Government Center, Conference Room A, 111 N.W. 1st Street, STE 17-202, Miami, Florida 33128. Petitioner TK Airport Solutions, Inc. (“TKAS”), Respondent Miami-Dade County (the “County”), and Intervenor Adelte Ports and Maritime S.L.U. (“Adelte”) were represented by counsel at the hearing.

Prior to the hearing, both the County and Adelte filed respective Motions to Dismiss TKAS’ Bid Protest on the basis that it was untimely filed. The undersigned reviewed both Motions to Dismiss, TKAS’ Response in opposition, and the Replies filed by the County and Adelte. At the outset of the hearing, counsel for the County and Adelte requested that the

undersigned rule on their Motions to Dismiss prior to considering the merits of TKAS' Bid Protest. The undersigned deferred ruling on the Motions to Dismiss and provided TKAS with its two hours to present any argument and proffer any evidence that it chose in furtherance of its Bid Protest. In so doing, the undersigned advised TKAS that any such argument or evidence should include the timeliness issues raised in the Motions to Dismiss. TKAS proceeded with its presentation, which included testimony from its client representative Glenda Leake, following which, TKAS closed its case.

Having reviewed and considered TKAS' Bid Protest, the Motions to Dismiss and related pleadings filed by the County, Adelte, and TKAS, the argument and evidence presented at the hearing, and the post-hearing submissions by the parties, the undersigned Hearing Examiner makes the following findings and recommendations:

FINDINGS

1. The subject Invitation to Quote ("ITQ") sought bidders for the replacement of 10 Passenger Boarding Bridges ("PBBs") at Concourses D, E, F, G, and H at Miami International Airport. The ITQ was issued to the Miami-Dade County Pool of Prequalified Vendors No. RTQ-01841, Passenger Loading Bridges Prequalification Pool, for GROUP 1 Prequalified Vendors. A true and correct copy of the ITQ can be found at TKAS Exhibit 1.

2. Part I, Section 1 of the ITQ states that the "General Terms and Conditions of Miami-Dade County (County) shall apply to all resultant Contracts from this ITQ" and provides a link to the County's General Terms and Conditions. ITQ at Part I, § 1.

3. Section 1.13 of the County's General Terms and Conditions states:

A recommendation for Contract award or rejection of award may be protested by a Bidder in accordance with the **procedures contained in Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County, as amended, and as established in Implementing Order No. 3-21.**

General Terms and Conditions at 1.13 (emphasis added). A true and correct copy of the General Terms and Conditions can be found at TKAS Exhibit 2.

4. Section 1.13(A) of the General Terms and Conditions states:

A written intent to protest shall be filed with the Clerk of the Board and emailed to all participants in the competitive process within three County workdays of the filing of the County Mayor's recommendation. This three-day period begins on the County workday after the filing of the County Mayor's or designee's recommendation. Such written intent to protest shall state the grounds on which it is based and shall be accompanied by a filing fee as detailed below.

General Terms and Conditions at 1.13(a) (emphasis added).

5. Section 2-8.4 (b) of the County Code, which is specifically referenced in Section 1.13 of the General Terms and Conditions, and thus incorporated in the ITQ, states:

"A written intent to protest shall be filed with the Clerk of the Board and mailed to all participants in the competitive process and to the County Attorney within three (3) working days of the filing of the Mayor's recommendation....No bid protest shall be accepted unless it complies with the requirements of this Section."

Code at § 2-8.4(b). (emphasis added)

6. Implementing Order 03-21 ("IO 3-21"), which is specifically referenced in Section 1.13 of the General Terms and Conditions, and thus incorporated in the ITQ, sets forth the procedures which govern the prosecution of a bid protest in the County. A true and correct copy of IO 3-21 is attached as Exhibit E to Adelte's Motion to Dismiss.

7. Pursuant to Section II of IO 3-21, a written Intent to Protest in a competitive procurement process must be filed **"within three (3) work days of the filing of the award recommendation with the Clerk of the Board."** Thereafter, a protestor has 3 additional days to file its bid protest along with supporting evidence and pertinent documents. IO 3-21 at Section II (emphasis added). IO 3-21 unambiguously provides that **"[f]ailure to file the written protest**

within the required time limits established in this Implementing Order shall constitute a waiver of the right to protest the award recommendation.” *Id.* at Section I (emphasis added).

8. The undersigned finds that the General Conditions, which refer bidders to the applicable provisions in the County Code and its Implementing Order, properly apprised TKAS of the time restrictions for filing a protest.

9. Pursuant to the ITQ, there was a minimum requirement that the pre-qualified vendors had to demonstrate:

Bidders shall submit at the time their Bid is submitted, a certificate of compliance with NFPA 415, latest edition, from a certified testing company located in the continental United States and manufacturer’s compliance statement attesting to the PBBs’ compliance with NFPA 415 (in effect as of the date of Bid submittal). Failure to submit at time of Bid submittal shall render the Bid non-responsive.

ITQ at § B(5).

10. On or about April 10, 2024, the County issued Addendum No. 2 to the ITQ, which, among other things, responded to various questions from bidders, including TKAS, seeking clarification on the ITQ’s requirements and intricacies. A true and correct copy of Addendum No. 2 can be found at TKAS Exhibit 3, 2-9.

11. In relevant part, one of the questions TKAS submitted to the County regarded ITQ Pat II, Section 5, item C, which stated that “The Contractor shall warrant that all components are new and manufactured using new U.S. produced materials, and are of good quality, suitable for aircraft use, and are free and clear from all liens, encumbrances, and title defects.” Addendum No. 2 at 3. TKAS asked the County “Can you confirm if compliance with 49 USC § 50101, BABA and other related Made in America Laws is required and if waiver needs to be submitted.” *Id.* The County responded “Compliance with 49 USC § 50101 is not required. However, please refer to PART II, Section 5.C, of the ITQ Document.” *Id.*

12. On or about April 12, 2024, the County issued Addendum No. 3 to the ITQ, which, among other things, responded to various questions from bidders, including TKAS, seeking clarification on the ITQ's requirements and intricacies. A true and correct copy of Addendum No. 3 can be found at TKAS Exhibit 3, 10-11.

13. At the hearing, TKAS' corporate representative Glenda Leake testified that TKAS posed questions to the County after reading the ITQ and to seek clarity on the ITQ's requirements.

14. On or about April 17, 2024, both TKAS and Adelte submitted bids in response to the ITQ. True and correct copy of the bids submitted by TKAS and Adelte can be found at TKAS Exhibits 4-5.

15. It is undisputed that Adelte's bid contained the lowest bid price.

16. On or about July 16, 2024, the County issued correspondence to Adelte, with copy to TKAS, advising that Adelte had been recommended for award of the subject contract (the "Recommendation of Award"). A true and correct copy of the Recommendation of Award can be found at TKAS Exhibit 6.

17. In relevant part, the Recommendation of Award provided that:

In accordance with Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21, this letter serves to notify you that your firm has been recommended for award of the referenced Project based on the bid submitted on April 17, 2024. **Pursuant to the referenced legislation, the three (3) workday protest period shall commence upon the filing of this recommendation to award with the Clerk of the Board.** The three (3) workday period is determined by counting workdays from the day after the award recommendation was filed.

Recommendation of Award at 1 (emphasis added).

18. The Recommendation of Award was filed with the Clerk of the Board on July 16, 2024. *See* File Stamp on Recommendation of Award.

19. Consequently, the protest period pursuant to Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21 expired on July 19, 2024.

20. The undersigned finds that Recommendation of Award, which was stamped as received by the Clerk's office and copied to TKAS, provided adequate notice to all recipients of the time restrictions to file a protest.

21. On or about July 18, 2024, TKAS sent a letter to the County inquiring if Adelte would be compliant with the requirements set forth in the bid specification that "All PBBs shall be fabricated of construction products produced and manufactured in the United States of America, as further described in Section 1, General Terms and Conditions, Sub-Section J. Domestic Preferences for Procurements." A true and correct copy of TKAS' July 18, 2024, Inquiry Letter can be found at TKAS Exhibit 7. Notably, TKAS' Inquiry Letter does not formally or informally protest the Recommendation of Award to Adelte. Rather, it simply asked if Adelte was compliant with the bid specification.

22. On July 26, 2024, the County responded to TKAS' July 18, 2024, Inquiry Letter stating in part:

After extensive dialogue between MDAD's Procurement and Materials Management Division and subject matter experts (SME), it was clear that no PBB is fully fabricated only of construction products produced and manufactured in the United States of America. Moreover, referenced solicitation is for the acquisition of goods and services and *not* a construction project nor eligible for state or Federal reimbursement. Thus, Section 1.64(J) of the General Terms & Conditions and Section 2-8.2.6.1 of the Code of Miami-Dade County *titled*, Buy American Iron and Steel Products Procurement Program, are not applicable to this procurement.

A true and correct copy of the County's July 26, 2024 Response Letter can be found at TKAS Exhibit 8.

23. On or about August 9, 2024, 18 work days after the Recommendation of Award and 10 work days after the County responded to TKAS' July 18, 2024, Inquiry Letter, TKAS submitted its "Notice of Intent to Protest and Formal Protest" of EVN00008106, Passenger Boarding Bridge Replacement at Concourses D, E, F, G, and H at Miami International Airport (the "Bid Protest"). A true and correct copy of the Bid Protest can be found at TKAS Exhibit 10.

24. Importantly, in the Bid Protest, TKAS concedes that:

TKAS understands that this protest is outside of the protest window established by the General Conditions, but for the reasons articulated below, TKAS was prevented from timely filing its protest until the facts supporting this protest were made known by the Miami-Dade Aviation Department, Procurement & Materials Management Division ("MDAD"). (emphasis added)

Bid Protest at 1.

25. On September 16, 2024, both the County and Adelte submitted Motions to Dismiss the Bid Protest as untimely.

26. On September 18, 2024, TKAS submitted a Response in Opposition to the Motions to Dismiss, arguing that it lacked a "clear point of entry" due to defective notice of the bid protest process and that consequently, equitable tolling should apply and the protest deadlines should be tolled.

27. On September 19, 2024, the County and Adelte filed Replies in support of their Motions to Dismiss, arguing that TKAS had a clear point of entry as it was put on notice of the protest procedure and the three workday deadline to file their protest at least 4 different times and that there are no extraordinary circumstances that warrant the application of equitable tolling.

RECOMMENDATIONS

1. Bidders have a responsibility to thoroughly review the specifications contained in a solicitation document and are charged with the duty to become familiar with its terms. Section 1.2 E of the General Conditions state in pertinent part as follows:

E. Contents of Solicitation and Bidders' Responsibilities

1. It is the responsibility of the Bidder to become thoroughly familiar with the requirements and terms and conditions of this Solicitation. Pleas of ignorance by the Bidder of conditions that exist or that may exist will not be accepted as a basis for varying the requirements of the County, or the compensation to be paid to the Bidder.

2. By TKAS' own admission, the Bid Protest was untimely as it was filed more than 3 workdays after the Recommendation of Award was filed with the Clerk of the Board. Bid Protest at 1.

3. **Clear Point of Entry.** Both in its Response to the Motions to Dismiss and during the hearing, TKAS argued that its protest should not be considered untimely because it contends that neither the solicitation, the general terms and conditions, nor the recommendation for award provided TKAS a "clear point of entry" into this Miami-Dade County bid protest process. TKAS argues that there is a common law requirement that the County's notice required by Code Section 2-8.4 and Implementing Order No.: 03-21 must inform prospective protesters of their rights with exhaustive specificity and must specifically mention that failure to timely file will result in a waiver of its right to protest. TKAS, however, did not provide any support for this position in its pleadings or during the hearing.

4. In support of its position, TKAS instead points to *Capital Copy, Inc. v. University of Florida*, 526 So.2d 988 (Fla. 1st DCA 1988) as establishing a requirement for a "clear point of entry." In *Capital Copy*, the Court was faced with an untimely bid protest subject to Section 120.53(5)(a), Florida Statutes, a portion of the Florida Administrative Procedures Act (the APA)

which required that the notice of decision to accept or reject a bid contain the following statement: “Failure to file a protest within the time prescribed in s. 120.53(5), Florida Statutes, shall constitute a waiver of proceedings under chapter 120, Florida Statutes.” *Id.* The decision did not contain the statutorily required language. The Court held that “[t]he failure to include the statutory notice, or words of substantially similar effect, in the posted bid tabulation resulted in appellant's not receiving a clear point of entry to protest the award of the bid to the successful bidder.” *Id.* But the County is not generally subject to the provisions of Chapter 120, Fla. Stat. *See Coastal Fuels Marketing v. Canaveral Port Authority*, 962 So. 2s 942 (Fla. 5th DCA 2007) (“all other units of government, such as cities and counties, are subject to the APA only if expressly made so by the legislature or judicial decision”); *Greene v. Carson*, 515 So.2d 1007 (Fla. 1st DCA 1987) (APA only applies to Counties where expressly made subject to it by general or special laws or existing judicial precedent.) And TKAS did not provide in its pleadings or during the hearing any support for applying the APA to any County procurement process anywhere in Florida. Accordingly, *Capital Copy* does not establish any precedent in this matter, as it applies a statute that is facially inapplicable here.

5. During the hearing, TKAS additionally suggested that its argument was supported by *Sutron v. Lake County Water Authority*, 870 So.2d 930 (Fla. 5th DCA 2004); TKAS argued that this case stands for the proposition that Florida general procurement statutes—arguably including Chapter 120—embody public policy goals which should flow down to local municipalities. This suggestion misreads *Sutron*. In *Sutron*, a local government, acting under its own procurement authority had made the independent choice to reject all bids as they were concerned that there was a conflict of interest. *See Sutron*, 870 So. 2d at 932. The low bidder challenged this choice as being arbitrary; the Authority responded that their choice could not be arbitrary because it matched the same conflict of interest concerns animating 287.057 Fla. Stat, a

statute otherwise inapplicable to the local government procurement. *See Sutron* 870 So. 2d at 932 (“The trial court determined that the Authority did not act in an arbitrary, unreasonable or capricious manner in rejecting all bids submitted because it followed the public policy of this state, expressed in section 287.057(10), Florida Statutes.”) Neither the Court nor the Authority, in other words, were stating that 287.057(10) was legally controlling; instead the Court concluded that, inasmuch as the Authority’s independent policy choices were the same as those made by the Florida legislature, those choices should not be deemed arbitrary. The statute in that case was a shield, protecting the government’s discretionary choice, and not a sword compelling government action in compliance with an inapplicable statute. Accordingly, it does not stand for the proposition that local governments are bound to follow otherwise inapplicable procurement statutes.

6. As there appears to be no case law of which I am aware, establishing any particularized requirements for a clear point of entry, or otherwise setting forth a standard by which I could determine whether or not the County Code establishes a clear point of entry, I am bound to apply the County Code as written. Accordingly, as the County Code provides that the triggering event for a bid protest is the filing of a recommendation to award with the Clerk—and as there is no dispute that the recommendation was filed with the Clerk and copied to TKAS as required by the Code—I conclude that TKAS was provided with the notice required by law.

7. Moreover, even were I to apply the statutory requirements of Chapter 120, I would still conclude that the County’s notice is sufficient. A clear point of entry can be established even if it is “not a model of clarity” so long as it informs the protester of his right to protest. *Perry v. Dep’t of Children & Families*, 220 So. 3d 546, 550 (Fla. 3d DCA 2017) (“While DCF’s February 23, 2016 letter to Petitioner is not the model of clarity, it does notify

Petitioner that she has a right to a hearing” and thus provides a clear point of entry.) Here, it is clear both that the right to protest was clearly put before TKAS and that TKAS in fact was aware of this right. During the hearing, Ms. Leake conceded that she personally received and reviewed the Recommendation for Award; that Recommendation explicitly noted that:

In accordance with **Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21**, this letter serves to notify you that your firm has been recommended for award of the referenced Project based on the bid submitted on April 17, 2024. **Pursuant to the referenced legislation, the three (3) workday protest period shall commence upon the filing of this recommendation to award with the Clerk of the Board.** The three (3) workday period is determined by counting workdays from the day after the award recommendation was filed. (emphasis added)

TKAS was additionally put on notice of the bid protest procedures, and reminded that the Recommendation For Award was their point of entry to a bid protest, at least 3 other times:

- a. **The Invitation to Quote (“ITQ”)**: The ITQ, the solicitation document that TK received inviting it to submit a bid, informs TK that “Section 1, General Terms and Conditions of Miami-Dade County (County) shall apply to all resultant Contracts from this ITQ. This Section is available on demand at the County’s Strategic Procurement Department’s (SPD) webpage: <https://www.miamidade.gov/procurement/library/boilerplate/general-terms-and-conditions-r23-3.pdf>. **General Terms and Conditions of Section 1 are non-negotiable.**” See ITQ (emphasis added). Section 1.13(A) of the General Conditions titled “BID PROTEST” states, in relevant part, that: “A written intent to protest shall be filed with the Clerk of the Board and emailed to all participants in the competitive process **within three County workdays of the filing of the County Mayor’s recommendation. This three-day period begins on the County workday after the filing of the County Mayor’s or designee’s recommendation.**” See General Conditions at § 1.13(A) (emphasis added).

- b. **The Code:** Section 2-8.4 (b) of the Code states: “A written intent to protest shall be filed with the Clerk of the Board and mailed to all participants in the competitive process and to the County Attorney **within three (3) working days of the filing of the Mayor's recommendation....No bid protest shall be accepted unless it complies with the requirements of this Section.**” *See* Code at § 2-8.4(b).(emphasis added)
- c. **The Implementing Order:** Pursuant to Section II of IO 3-21, a written Intent to Protest in a competitive procurement process must be filed “**within three (3) work days of the filing of the award recommendation with the Clerk of the Board.**” Thereafter, a protestor has 3 additional days to file its bid protest including pertinent documents and supporting evidence. IO 3-21 at § 2 (emphasis added). IO 3-21 unambiguously provides that “[f]ailure to file the written protest within the required time limits established in this Implementing Order shall constitute **a waiver of the right to protest the award recommendation.**” *Id.* at § 1 (emphasis added).
8. TKAS testified through its Corporate Representative Glenda Leake, that it read and analyzed the ITQ, which incorporates the General Terms and Conditions, which themselves specifically reference the Code and IO 3-21. Further, TKAS submitted detailed questions to the County regarding the specifications of the ITQ which demonstrate that it read and analyzed the ITQ. Indeed, the General Terms and Conditions are incorporated in the very first section of the ITQ.
9. Consequently, even were I to assume *arguendo* that I should apply a notice standard other than that found in the County Code, I cannot construe these facts as anything

other than providing reasonable notice. TKAS's argument that the County failed to provide TKAS with proper notice of the deadline to file a bid protest is simply unavailing. Indeed, TKAS was made aware of the deadline at least four (4) times and was never prevented by any actions or inactions of the County from filing its Bid Protest.

10. **Equitable tolling does not apply to the facts at hand.** "Under the doctrine of equitable tolling, a late-filed petition should be accepted when the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum," provided that the opposing party will suffer no prejudice." *Pro Tech Monitoring, Inc. v. State, Dept. of Corr.*, 72 So. 3d 277, 280 (Fla. 1st DCA 2011) (internal quotations omitted). However, even though the doctrine of equitable tolling may be available to file an untimely bid protest to a specific solicitation, "***the filing deadlines contained therein should be strictly enforced under ordinary circumstances.***" *Id.* at 281 (emphasis added).

11. In *Pro Tech Monitoring*, the First DCA found that equitable tolling applied to a late-filed bid protest where the protestor delivered the protest on the deadline, but it was not stamped by the clerk until the next day because a security guard did not allow the protestor to deliver the documents personally because access to the building was restricted to the public. *Id.* at 278–79.

12. Here, there are no "extraordinary circumstances" that warrant the application of equitable tolling. TKAS was neither misled or lulled into inaction by the County, was never prevented from asserting its rights by the County, and did not file its Bid Protest in the wrong forum. TKAS simply failed to account for the deadline by which to file its Bid Protest. As *Pro Tech* tells us, "***the filing deadlines contained therein should be strictly enforced under***

ordinary circumstances.” *Id.* at 281 (emphasis added). The circumstances here could not be more ordinary. TKAS simply failed to file its protest by the required deadline.

13. Moreover, TK’s ignorance or misunderstanding of the law does not warrant excusable neglect or the application of equitable tolling. *Hovercraft of S. Florida, LLC v. Reynolds*, 211 So. 3d 1073, 1077 (Fla. 5th DCA 2017) makes clear that:

[A]n attorney's ignorance or misunderstanding of the law does not constitute excusable neglect. *Peterson v. Lake Surprise II Condo. Assoc.*, 118 So.3d 313, 313 (Fla. 3d DCA 2013) (“A conscious decision not to comply with the requirements of the law cannot be ‘excusable neglect’ under the rule or any other equivalent requirement.”); *Geer v. Jacobsen*, 880 So.2d 717, 720–21 (Fla. 2d DCA 2004) (“The attorney's errors, even if constituting mistakes of law, tactical errors, or judgmental mistakes, do not constitute excusable neglect”).

Similarly, an attorney's inadvertence or ignorance of the rules does not constitute excusable neglect.” (citations omitted)); *Carter*, 840 So.2d at 1158 n.6 (“Generally, the courts do not find excusable neglect in the attorney's misunderstanding or ignorance of the law or rules of procedure.”); *see also State Farm Mut. Auto. Ins. Co. v. Isom*, 681 So.2d 1170, 1172 (Fla. 5th DCA 1996) (concluding rule 1.540 does not provide relief for judgmental mistakes, tactical errors of counsel, or mistakes of law, but only mistakes resulting from oversight, neglect, or accident). Generally, courts are inclined to find excusable neglect “when the error occurs due to a breakdown in the mechanical or operational practices of the attorney's office equipment or staff.” *Boudot v. Boudot*, 925 So.2d 409, 416 (Fla. 5th DCA 2006) (citing *Carter*, 840 So.2d at 1158 n.6)).

14. Here, TKAS was clearly provided with notice of the relevant bid protest filing deadline in the ITQ, the Code, IO 3-21, and the Recommendation of Award. TKAS was also provided with the relevant Code sections, legislation, and orders that would govern the County’s procedure as to the relevant solicitation. Thus, TKAS either ignored the filing deadline or failed

to understand it. As noted in *Hovercraft*, ignorance or misunderstanding of the law is no defense. Consequently, equitable tolling does not apply.

15. Even construing the facts as favorably as possible in TKAS favor, the Bid Protest was still untimely. Indeed, a notice of intent to protest does not need to be a full recitation of the facts supporting a protest; it needs instead only to set out the grounds for the protest in general terms. Had TKAS timely filed a *de minimis* notice of intent to protest, TKAS would have had, per the County Code, three additional days to file “all pertinent documents and supporting evidence with the Clerk of the Board.” See Section 2-8.4(b) of the Code. And, had any subsequent public records requests revealed additional information, TK could have at that point incorporated this material into its protest as well:

Notwithstanding the above, in the event that a public records request is made within the first three days of the above referenced period, a protester may utilize any public records obtained as evidence or additional grounds for protest, provided that, a) the protester met all the deadlines set forth above, and, b) a supplementary filing is made with the Clerk of the Board within 48 hours of receipt of the records responsive to the request.

Code at § 2-8.4(b).

16. The Code provides a process for protesters to supplement their protests in light of newly learned information. But that supplementation process is only available if the protester “**met all deadlines set forth above.**” *Id.* As TKAS failed entirely to meet the deadlines, it cannot avail itself of this process to add additional information or grounds to its protest. (emphasis added)

17. Even after the County provided its response to TKAS’ July 18, 2024, Inquiry Letter, on July 26, 2024, TKAS continued to delay in filing a protest. It is undisputed that the County provided TKAS with the information it sought on July 26, 2024. Even assuming *arguendo* that this establishes “extraordinary circumstances” such that equitable tolling should

apply, tolling the deadlines until July 26, 2024 would have meant that the protest was due to be filed on July 31, 2024, three working days after TKAS received the County's response.

18. But TKAS did not file its intent to protest until August 9, 2024. Thus, even in the most charitable light, TKAS' filing was nine days too late. Consequently, even if equitable tolling was legally available, which it is not, TKAS still failed to file its protest by the required deadline.

19. Therefore, the undersigned finds both as a matter of fact and law that TKAS had adequate notice of the time restrictions to file a protest and failed to file a timely protest. Per the requirements of Section 2-8.4 of the County Code and Implementing Order 3-21, the grounds for protest have been waived and the Motion to Dismiss must be granted.

DECISION

In reaching my decisions herein, I have considered TKAS' written protest and supporting documents and evidence appended thereto, the County Mayor's recommendation, and supporting documentation, and all evidence presented at the hearing. Additionally, I do not find that the County Mayor or County Mayor's Designee acted fraudulently, arbitrarily, illegally or dishonestly in this situation.

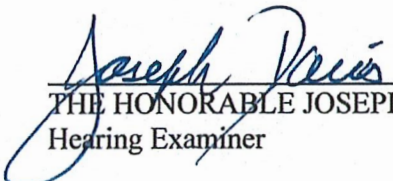
I also find that TKAS had appropriate notice of the applicable bid protest filing deadline which it did not meet which therefore constitutes a waiver of the right to protest the award recommendation. I find no actions or inactions of the County that caused the late filing of TKAS's bid protest, notwithstanding TKAS' apparent argument to the contrary.

In reaching my decisions herein I have considered 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 material facts. Notwithstanding TKAS' various arguments as to

why all bids should be rejected and the project re-bid or that it should be awarded the bid, the material facts it argues in support of its position are legally outweighed by the lateness of their bid protest filing resulting in a waiver of the right to protest the award recommendation. Had TKAS timely filed its bid protest, its various arguments supporting its position here might very well have resonated differently with me. I have therefore determined that as relates to this bid protest, the legal grounds for the same are frivolous since the protest was filed late, notwithstanding that the factual ground for the protest may not necessarily be frivolous, but for the lateness of the bid protest filing itself.

For the reasons set forth above, I find that TKAS' bid protest was untimely filed so I must therefore concur in the County Mayor's recommendation as to the bid award in favor of Adelte in this instance.

Dated this 3rd day of October, 2024.



THE HONORABLE JOSEPH DAVIS
Hearing Examiner



MEMORANDUM

(Revised)

TO: Honorable Chairman Anthony Rodríguez
and Members, Board of County Commissioners

DATE: December 3, 2024

FROM: 
Glen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(A)(4)

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 ____, majority plus one ____, 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) ____, 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(A)(4)
12-3-24

RESOLUTION NO. R-1063-24

RESOLUTION APPROVING AWARD OF CONTRACT NO. EVN0008106 TO ADELTE PORTS AND MARITIME S.L.U. FOR THE REPLACEMENT OF 10 PASSENGER BOARDING BRIDGES IN CONCOURSES D, E, F, G, AND H AT MIAMI INTERNATIONAL AIRPORT IN AN AMOUNT OF \$21,554,111.00 FOR A TERM OF 350-CALENDAR DAYS FOR THE MIAMI-DADE AVIATION DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD TO THE RECOMMENDED VENDOR 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 and documents, copies of which are 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. EVN0008106 for the replacement of 10 passenger boarding bridges in Concourses D, E, F, G, and H at Miami International Airport (MIA) for the Miami-Dade Aviation Department in an amount of \$21,554,111.00 for a term of 350-calendar days; and authorizes the County Mayor or County Mayor's designee to give notice of this award to the recommended vendor 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 No. 3-38. A copy of the contract document is on file with and available upon request from the Aviation Department.

The foregoing resolution was offered by Commissioner **Oliver G. Gilbert, III**, who moved its adoption. The motion was seconded by Commissioner **Juan Carlos Bermudez** and upon being put to a vote, the vote was as follows:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of December, 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.

David M. Murray
Angela F. Benjamin