

Memorandum



Date: September 17, 2024

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

Agenda Item No. 8(P)(1)

From: Daniella Levine Cava
Mayor

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

Subject: Recommendation to Award a Contract for Vending Machines for Miami-Dade County

Summary

This contract is for the provision of automatic dispensing vending machines at various Miami-Dade County (County) facilities and locations. It encompasses the installation, maintenance, repair, and stocking of vending machines for dispensing non-alcoholic beverages, food, candy, and other standard vending items for employees, visitors, and travelers. Approximately 20 percent of the products offered in the vending machines must be considered healthier alternatives and meet certain nutritional criteria. The equipment provided by the vendor shall meet the Energy Star specifications for energy efficiency. Approval of this item will allow vending machines to be placed strategically in locations with heavy foot traffic, such as port terminals and the Stephen P. Clark Government Center, producing revenue for the County estimated to exceed \$1,000,000 over a five-year period. The contract will be managed by the Animal Services Department (ASD), Internal Services Department (ISD), Seaport (PortMiami), and the Office of the Property Appraiser (PA) for their respective facilities.

Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, *Contract No. EVN0003886, Vending Machines for Miami-Dade County*, to RQ Vending LLC for multiple County departments with revenue estimated to be over \$1,000,000 for a five-year term. This contract will replace *Contract No. FB-00053* which was approved by the Board on May 6, 2014, via Resolution No. R-416-14 and will expire on December 31, 2024.

Background

An Invitation to Bid (ITB) was issued under full and open competition on November 29, 2023. On the closing date of February 14, 2024, the County received 12 bids, including nine from local firms. To encourage vendor participation, prior to advertisement of the solicitation, thorough market research was conducted that included identifying potential vendors and posting the scope of work on the County's Future Solicitations website for the vendor community to preview. Additionally, an email was sent to 10 vendors identified through market research, where they were notified of the draft scope of services posted on the County's website and surveyed regarding their ability to provide the services and their interest in responding to the solicitation. Four vendors advised that they could provide the services and would participate in the upcoming solicitation.

The contract provides for the installation, maintenance, repair, and stocking of vending machines for dispensing non-alcoholic beverages, food, candy, and other standard vending items for employees, visitors, and travelers. The award of this contract is being made to the vendor who offered 52 percent of gross receipts, which represents the highest percentage of gross receipts that was offered to the County.

On May 29, 2024, Paramount Vending Services dba Culinary Ventures Vending filed a formal bid protest. A bid protest hearing was conducted by Hearing Examiner Marc Anthony Douthit on June 24, 2024. On July 17, 2024, the Hearing Examiner denied the protest and upheld the Mayor's recommendation to award RQ Vending LLC based on the evidence presented, the arguments made,

and applicable procurement law. The Hearing Examiner's Report reflecting his Recommendations is attached.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is estimated to be over \$1,000,000 in revenues to the County. It is difficult to project revenues that will be generated for the respective departments due to the recommended vendor providing 52 percent of gross sales, rather than a fixed monthly minimum guarantee that applied to the current contract.

Department	Projected Revenue	Funding Source	Contract Manager
ASD	\$1,000,000+	Revenue Generating	Lia Portilla
ISD			Lashonne Williams-Canty
PA*			Juan Romano
PortMiami			Frank Ramirez
Total	\$1,000,000+		

*Note: This contract contains termination for convenience provisions, which can be exercised if the commodities and/or services in this item are affected by the establishment of the constitutional offices. Staff is working on adding assignment provisions to existing contracts that may be impacted by the establishment of constitutional offices.

Track Record/Monitor

Christopher Grant-Henriques 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 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*	
RQ Vending LLC	3636 SW 57 Avenue Miami, FL	Same	6 100%	Manuel A. Roversi

*Provided pursuant to Resolution No. R-1011-15. 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
Acai Tasty LLC	Yes	
Bettoli Trading Corp. dba Bettoli Vending	Yes	
Bora Tech, Inc.	No	
Double R Vending Corp.	Yes	
EKW Restaurant & Grocery Supply, Inc.	Yes	
Juyara Enterprises, Inc.	Yes	

LaBranche Blockchain Market Exchange & Property Management, LLC dba LaBranche Solutions	Yes	Percentage of gross receipts offered less than the recommended bidder.
Oriole Vending Corp.	Yes	
Paramount Vending Services, Corporation dba Culinary Ventures Vending	No	
Sheyene Technology, Inc.	Yes	
Uber Vending Services, Inc.	No	

Due Diligence

Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with SPD's Procurement Guidelines to determine vendor responsibility, including verifying corporate status and that there are no performance and compliance issues through various vendor responsibility lists and a keyword internet search. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to vendor responsibility.

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the County's current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding meetings and drafting sessions with the user departments. The solicitation was updated to include a fixed percentage of revenue as opposed to a fixed minimum monthly guarantee, updated energy-star requirements, product pricing considerations, and updated revenue reporting requirements.

Applicability of Ordinances and Contract Measures

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

Attachment



Carladenise Edwards
 Chief Administrative 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

July 25, 2024

Mr. Neil Donnelly
Sales Manager
Paramount Vending Services DBA Culinary Ventures Vending
6250 NW 27th Way
Forth Lauderdale, Florida 33309

Re: Contract No. EVN0003886, Vending Machines for Miami-Dade County


Dear Mr. Donnelly,

Forwarded for your information is a copy of the Findings and Recommendation filed by Marc Douthit, Hearing Examiner, in connection with the bid protest hearing, held on Monday, June 24, 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/dmc

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. Neil Donnelly
Paramount Vending Services DBA CVV
Page 2
June 25, 2024

Eduardo Gonzalez, Assistant County Attorney, CAO (via email)
Tricia-Gaye Cotterell, Assistant County Attorney, CAO (via email)
Clara Pimentel, Assistant Agenda Coordinator, CAO (via email)
Adeyinka Majekodunmi, Commission Auditor, OCA (via email)
Namita Uppal, Director of the Strategic Procurement Department, SPD (via email)
Lydia Osborne, Assistant Department Director, SPD (via email)
Christopher Grant-Henriques, Procurement Contracting Manager, SPD (via email)
Darnell Hill, Procurement Contracting Officer 1, SPD (via email)
grm@rqvending.com, RQ Vending (via email)
maurizio@bettolivending.com, Bettoli Vending (via email)
contact@sheyene.tech, Sheyene Technology Inc. (via email)
brendan@mybora.co, Bora Tech, Inc. (Bora) (via email)
doublervendingco@bellsouth.net, Double R Vending Corp. (via email)
llewellnypimentel@gmail.com, EKW Restaurant & Grocery Supply, Inc. (via email)
WENDY@LABRANCHESOLUTIONS.COM, LaBranche Solutions (via email)
ubervending@gmail.com, Uber Vending Services, Inc. (via email)
ndonnelly1@comcast.net, Culinary Ventures Vending (via email)
juyaraenterprises@gmail.com, Juyara enterprises (via email)
wesley@acaitasty.com, Acai Tasty LLC (via email)
Oriolevending@gmail.com, Oriole Vending (via email)

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

In re: Bid Protest of Recommendation of Award of ITB PM - EVN0003886
Vending Machines for Miami-Dade County

_____ /

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 came before the undersigned Hearing Examiner on June 24, 2024, upon the bid protest, filed by Paramount Vending Services d/b/a Culinary Ventures Vending, LLC (“CVV”), to the Miami-Dade County (“County”) Mayor’s recommendation to award Contract No. EVN0003886 (“Contract”) to RQ Vending, LLC (“RQ Vending”).

A Motion to Intervene, was filed by Bettoli Trading Corp d/b/a Bettoli Vending (“Bettoli”) prior to the hearing. An *ore tenus* motion to intervene was made by RQ Vending, the recommended awardee at the time of the hearing.

Both Motions to Intervene were granted on a limited basis to permit Bettoli and RQ Vending to participate in the hearing. Allowing the intervention in no way should be interpreted as a substantive determination of the correctness of their respective positions taken at the hearing. The participation of the intervenors was without objection of the parties.

The Protestor was represented at the hearing by two of its principals, Joseph Depasquale and Neil Connelly appearing without counsel on behalf of the Protestor. Miami-Dade County was represented by Assistant County Attorneys Tricia Gayle Cottrell, Esq. along with Eduardo Gonzalez, Esq. The Intervenor was represented by Jay Tome, Esq. The recommended Awardee was present in the room and Gordon Bello, a representative of the company, was there on behalf of RQ Vending.

The proceedings were done through a hybrid system of electronic appearances via zoom and in-person. The Hearing Examiner appeared via Zoom and Joseph Depasquale also appeared via electronic means. The identity of Mr. Depasquale was confirmed by his partner Neil Connelly and there were no objections to his appearance.

No party raised any objection to the procedure and all parties confirmed that they were able to hear and understand the proceedings and no objections were raised to proceedings being conducted in this manner.

Each party presented documentary evidence as exhibits to the Record at the Hearing. The only objection was to a document presented by the Protestor at the hearing and was not presented until the time of the hearing. A ruling on its inclusion was reserved until if and when the document was attempted to be introduced during the proceeding. Questions related to

relevance and weight to be given to a document are dealt with herein. The County's provided a Pre-Hearing Brief and Memorandum of Law in advance of the hearing.

Live testimony was presented by the Protestor; the representative for the Awarded Bidder and Christopher Grant-Henriques, the County's procurement contracting manager.

The Protestor was limited to addressing only issues set forth in its Bid Protest documents and the unobjected to Exhibits presented at the time of the hearing.

I am constrained by the parameters set forth in the law that limits my determination to whether the County acted in an illegal, dishonest, fraudulent, or arbitrary manner in recommending the award of the Contract to RQ Vending as the responsive and responsible bidder offering the highest percentage of gross receipts. *See Liberty Cty. v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). In making this determination, I must evaluate four issues upon which CVV based its bid protest: (1) whether RQ Vending's failure to acknowledge certain Addenda to the County's Solicitation for the Contract rendered RQ Vending's bid non-responsive,¹ (2) whether the award process and criteria outlined in the

¹ CVV challenged the responsiveness of RQ Vending's bid for the first time at the hearing.

Solicitation undermined the fairness and integrity of the procurement; (3) whether the County improperly found that RQ Vending is a responsible bidder; and (4) whether Bettoli's arrears on its current contract with the County and any truth to the allegations of Bettoli's collusion on its bid would defeat any finding that Bettoli can be a responsible bidder. I must also determine whether the protest is supported by material facts necessary to establish the claim, or if the claim is supported by the application of existing law to those facts. Based on the evidence presented by the County and CVV, as well as relevant case law.

FINDINGS OF FACT

1. On November 29, 2023, the County advertised its Invitation to Bid for Solicitation EVN0003886 for "revenue generating vending machines for the sale of beverages and snacks for multiple Miami-Dade County departments and facilities." See County's Pre-Hearing Brief, Exhibit 1 (the "Solicitation") at § 2.1.

2. The Solicitation provided that "award of this contract will be made to the responsive responsible bidder who offers the highest percentage of gross receipts and meets the submittal requirements outlined below. *Id.* at § 2.4.

3. The submittal requirements include the bidder's: (1) regular engagement in the business of providing vending machine services, supported by two references from either current or former customers; (2) provision of specifications for equipment/vending machines to be installed; and (3) contact information such as name, email address, phone number, facility address, and the bidder's designated company representative. *Id.*

4. The Solicitation allowed potential bidders to ask questions related to the bid requirements. *See id.* at Addenda Nos. 2-4, 8. Both the questions and answers were made available to all bidders. *See id.*

5. The County received twelve bids at the close of the Solicitation on February 14, 2024. Bid Protest Hearing Tr. 77:1–3. The County's procurement contracting manager, Mr. Grant-Henriques, testified that he along with staff, initially reviewed all bids received to determine the face value of each Bid. given that the method of award indicated that the highest percentage of gross receipts would be awarded the contract. *Id.* 77:6–16. They determined RQ Vending offered the highest percentage of gross receipts at 52%. *Id.* 79:1–14. Bettoli offered the second highest percentage at 43% and CVV offered the third highest percentage at 42.5%. *See id.* 89:8–16.

6. Mr. Grant Henriques further testified that Staff then reviewed RQ Vending's submission and determined that RQ Vending's bid met all the requirements outlined in the Solicitation and was responsive. *Id.* 79:17–25. Additionally, the County performed a responsibility review to verify RQ Vending's references and to carry out the County's typical due diligence of a vendor being considered for award of a contract. *Id.* 80:3–4, 7–13.

7. The due diligence included checks to see whether the vendors appear on any scrutinized company list, if they are debarred by the County, if they have paid their local taxes, whether any judgments have been issued against them, or whether they have had to settle any claims against them in the past. *Id.* 80:7–19. In addition to its typical due diligence, the County also held a responsibility review meeting with RQ Vending to determine the validity of its bid submittal and to learn about the capabilities of the company. *Id.* 80:25–82:6

8. According to the testimony, the County learned that unlike most other companies, RQ Vending owned its machines and trucks debt free *Id.* 82:25–83:7. The Protestor challenges this determination and questions the number of machines RQ vending actually owns and whether the Awarded Bidder has an adequate number of machines to perform under the contract..

9. Mr. Grant-Henriques's testified in his opinion, after conducting the responsibility review and speaking to RQ Vending, he concluded that RQ Vending was a responsible vendor. *Id.* 84:1–6.

10. Thereafter, County stakeholders in the Contract were advised of the Procurement Department's review, findings, and recommendation for award. These stakeholders concurred with the recommendation to award and provided their assent to proceed with the award to RQ Vending. *Id.* 84:7–85:7.

11. On May 23, 2024, the Mayor recommended to the Board of County Commissioners, that RQ Vending be awarded the contract arising from this Bid Solicitation EVN0003886. *See id.* 68:21–23.

12. On May 29, 2024, CVV filed its Notice of Intent, protesting the award of the contract to RQ Vending..

13. At the time of the filing of the Notice of Intent, the Protestor filed no supporting documents or evidence in support of its claims. The only documents filed by the Protestor in this proceeding were presented at the time of the Hearing.

14. At the Hearing The Protestor produced excerpts of the General Terms and Conditions incorporated into the Solicitation and excerpts from the County's Tabulation Packet produced to the Protestor by the County in

response to its public records request. These items were already a part of the Public Record in this matter and were therefore being introduced only as illustrations to the points the Protestor was trying to make in support of its Protest.

15. The Protestor also raised the allegation that the County had not performed real, meaningful due diligence and that RQ Vending's 52% offer was borne out of inexperience and was a harbinger of inability to fulfill the terms of the contract.

ARGUMENT

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."

While I do not believe that this discretion is unfettered and there are limitations on it, I am reluctant to disturb the County's exercise of that Judgment. In the procurement context, the judgment of government employees or elected officials as to the merits or wisdom of a procurement decision is not easily challenged. See *Miami-Dade Caty 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 [it] 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.”).

The law further limits the ability to overturn a recommendation, limiting it to circumstances where the decision is 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). No such proof was provided in these proceedings which would provide the basis for a credible allegation in this regard. The allegation made by the Protestor that there have been fraud or collusion in the bidding process was not sufficiently proved to the level which would give rise to disturbing the County’s decision.

At the heart of the assessment of the evaluation of a it has sufficient confidence in the information before it to form the basis of a contractual relationship with the Awarded Bidder. 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). For all we know, the Awarded Bidder

may have made a business decision to take a “loss” on this contract. Who knows. Certainly not me, nor will I speculate.

In the procurement context, there is the requirement that I review the County’s decision making to ascertain whether the County 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. Dept. 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).. The Protestor also challenges the Award alleging that the response of the awarded bidder was not responsive to the requirements of the Bid Documents. The question of Responsiveness is a threshold determination that must be made by the County. A responsive proposal “is submitted on the correct forms, and

contains all required information, signatures and notarizations.” *Intercontinental Prop., Inc. v. State Dept. 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. Dept. of Health and Rehab. Serv.*, 606 So. 2d 380, 381 (Fla. 3d DCA 1992).

A responsive proposal “is submitted on the correct forms, and contains all required information, signatures and notarizations.” *Intercontinental Prop., Inc. v. State Dept. 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).

Generally, a bid may be rejected if there is a material variance between the bid and the solicitation. *Robinson Elec. Co. v. Dade Cnty.*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). A minor variance, however, will not

invalidate the bid. *Id.* (citing *Glatstein v. City of Miami*, 399 So. 2d 1005 (Fla. 3d DCA), *rev. denied*, 407 So.2d 1102 (Fla.1981)); *see also* *Charlotte Cnty. v. Grant Med. Transp., Inc.*, 68 So. 3d 920, 923 (Fla. 2d DCA 2011) (finding that a successful bidder's failure to acknowledge the addenda was a minor deficiency.) "[N]ot every deviation from the invitation [to bid] is material." *Robinson Elec. Co.*, 417 So. 2d. at 1034. A minor variance, however, will not invalidate the bid. *Id.* (citing *Glatstein v. City of Miami*, 399 So. 2d 1005 (Fla. 3d DCA), *rev. denied*, 407 So.2d 1102 (Fla.1981)); *see also* *Charlotte Cnty. v. Grant Med. Transp., Inc.*, 68 So. 3d 920, 923 (Fla. 2d DCA 2011) (finding that a successful bidder's failure to acknowledge the addenda was a minor deficiency.) "[N]ot every deviation from the invitation [to bid] is material." *Robinson Elec. Co.*, 417 So. 2d. at 1034.

There is no such thing as perfect procurement. A procurement decision may only be set aside if it lacks a rational basis or is otherwise unlawful. It is the Hearing Officer's role to determine whether the County's actions were arbitrary, not whether the County "got it perfect" on technical matters requiring agency expertise. *Biscayne Mariner Partners, LLC v. City of Miami*, No. 3D18-2061, 2019 WL 575327, at *4 (Fla. 3d DCA Feb. 13, 2019) (an agency's finding that an offer meets the requirements of a solicitation is reviewed for abuse of discretion).

I am bound by law to give deference to the determination of the County in deciding what is or is not a “material variance”. No evidence was provided beyond the testimonial statements of the Protestor that the County overlooked certain items that were “material” and were missing from the Awarded Bidders Bid Response. Specifically, that the Awarded Bidder did not acknowledge certain Addenda to the Bid Documents. In my view this alone does not provide justification to overturn the County’s decision making. I am not here to second guess the County’s decision. *Scientific Games, Inc. v. Dittler Bros.*, 586 So. 2d 1128, 1131 (Fla. 1st DCA 1991) (a court or hearing officer may not “second guess the members of evaluation committee to determine whether he and/or other reasonable and well-informed persons might have reached a contrary result”).

A protester’s mere disagreement with the government decision, no matter how vigorous, falls far short of meeting the heavy burden of showing the decision is irrational. *Miami-Dade Cnty. v. Church & Tower, Inc.*, 715 So. 2d 1084, 1089-90 (Fla. 3d DCA 1998). It is not my role to interpret for the County or any proposer, how the County interprets its own language in the Bid Documents.

The question of Responsibility carries an equally heavy burden for the Protestor. I am being asked to simply accept the idea that the Awarded

Bidder cannot perform the work it promises in the manner it promises. I address this issue primarily to recognize the role it played during the Hearing. The same can be said of the role of the Intervenor. Ultimately, the arguments raised by the Intervenor did not change the outcome of these proceedings, which was decided based upon general procurement law. Based upon what I have before me, I find that the activities of the Intervenor do not give any weight to the argument raised by the Protestor and which the Protestor acknowledged was not their intention to imply any wrongdoing on the Intervenor's part.

There is a real question as to whether this Hearing Examiner has the jurisdiction to hear this issue at all. This matter was not addressed in the Notice of Intent to Protest submitted by the Protestor and the County properly raised an objection in the Hearing.. Even if I stretch logic and somehow find it could be determined to be incorporated into general language of the Notice of Intent, the outcome of the argument is not dispositive to the determination herein.

The Protestor's opinion as to RQ Vending's capabilities is not instructive here. Indeed, speculation about what another party can or cannot do or is or is not willing to do requires caution. We are not always privy to a party's motives for entering into a business venture and a party could

knowingly decide to forego profit or even sign up for a loss. Indeed, even if I were to conclude that the Protestor's analysis was reasonable with regard to the Awardee's capabilities, 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 testimony of Mr. Grant-Henriques, which outlined the various steps and checks the County followed in assessing and ascertaining whether RQ Vending could perform the Contract as specified in the Solicitation, I cannot conclude that its latitude in its decision making is not limited by or affected by the fact that the County, may ultimately be found to have made the wrong decision.

The County did not act arbitrarily or unreasonably in making the determination that it has sufficient confidence in the information before it to form the basis of a contractual relationship with the Awarded Bidder. 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. Dept. of Health and Rehab. Serv.*, 606 So. 2d 380, 381 (Fla. 3d DCA 1992). For all we know, the Awarded Bidder may have made a business decision to take a "loss" on this contract. Who knows. Certainly not me, nor will I speculate.

Based upon due consideration of the testimony of the witnesses, exhibits, law, argument of counsel and representatives, and relevant procurement law, I find that the County did not act in an illegal, dishonest, fraudulent, or arbitrary manner in recommending the award of the Contract to RQ Vending as the responsive and responsible bidder offering the highest percentage of gross receipts to the County. I also find that the legal grounds for the protest are not supported by the application of existing law to the material facts. Therefore, I concur in the County Mayor's recommendation to award the subject Contract to RQ Vending, and I therefore recommend the Protest be **DENIED**.

Dated: __7/17/24__

 /s/Marc Anthony Douthit
Hearing Examiner Marc Anthony Douthit



MEMORANDUM
(Revised)

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

DATE: September 17, 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 ____, 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(P)(1)
9-17-24

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF CONTRACT NO. EVN0003886 TO RQ VENDING LLC FOR VENDING MACHINES IN A TOTAL AMOUNT ESTIMATED TO BE OVER \$1,000,000.00 IN REVENUE FOR A FIVE-YEAR TERM FOR MULTIPLE COUNTY DEPARTMENTS; 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, 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. EVN0003886 to RQ Vending LLC for vending machines for multiple County departments in a total amount estimated to be over \$1,000,000.00 in revenue 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 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 _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman

Anthony Rodríguez, Vice Chairman

Marleine Bastien

Juan Carlos Bermudez

Kevin Marino Cabrera

Sen. René García

Roberto J. Gonzalez

Keon Hardemon

Danielle Cohen Higgins

Eileen Higgins

Kionne L. McGhee

Raquel A. Regalado

Micky Steinberg

The Chairperson thereupon declared this resolution duly passed and adopted this 17th day of September, 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: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

mjs

Melanie J. Spencer
Tricia-Gaye Cotterell