Memorandum

MIAMI-DADE COUNTY

Date: December 1, 2021

Agenda Item No. 8(F)(8)

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Resolution No. R-1159-21

Subject: Recommendation for Approval to Award Contract No. FB-02008, Frozen Kosher Meals

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Recommendation

It is recommended that the Board of County Commissioners (Board) approve a competitive contract award, Contract *No. FB-02008, Frozen Kosher Meals,* for the Miami-Dade Corrections and Rehabilitation Department in the amount of $5,639,550. This contract will replace competitively solicited *Contract No. 8880-1/21*, *Frozen Kosher Meals*, which was awarded under delegated authority on June 1, 2011 for a five- year term. On May 17, 2016, the Board approved the single five year option to renew term through Resolution No. R-378-16. Subsequently, on October 3, 2019, the Board approved additional expenditure authority through Resolution No. R-1036-19.

The contract will allow for the purchase of frozen kosher meals to serve the County's inmate population, to include roast chicken, roast turkey, meat loaf, pot roast, vegetable cutlet, and spaghetti with meatballs. The meals served by the Department must adhere to strict guidelines that govern the treatment of incarcerated individuals. In accordance with Chapter 6 of the Florida Model Jail Standards (FMJS), inmates will be given three substantial, wholesome, and nutritious meals daily including one hot meal per day. Religious diets are provided based on an inmate's faith as correctional facilities are required to allow inmates to pursue their faith including, but not limited to, attending worship services, receiving visits from faith leaders, and observance of religious dietary laws. As required for compliance with the FMJS, the Department maintains and provides the following five different menu types: (1) General Population; (2) Boot Camp Program; (3) Juvenile Boot Camp Program; (4) Therapeutic based menus; and (5) Faith-Based menus including, but not limited to, Kosher, Halal, and Vegetarian.

On April 14, 2021, the County issued Solicitation *FB-01708*, *Frozen Kosher Meals* for the replacement of *Contract No. 8880-1/21,* however rejection of bids and re-solicitation was deemed to be in the best interest of the County. There is a companion item on the agenda for the rejection of bids received for *FB-01708.*

On July 22, 2021, Solicitation *FB-02008* was issued under full and open competition for the purchase of frozen kosher meals. Eight bids were received in response to the solicitation, including three "No Bids." Award is being recommended to a certified Small Business Enterprise firm. Upon advertisement of the solicitation, a total of 3,639 vendors were notified in BidSync, of which, 42 viewed the solicitation. Additional outreach efforts included contacting vendors identified through market research as well as notifying incumbent vendors. The unit price under this solicitation was lower by 57 cents per meal when compared to solicitation of the companion rejection item, FB-01708. This reduction represents cost avoidance of $653,362.50 for the five-year term of the contract.

Scope

The scope of this item is countywide in nature.

Fiscal Impact/Funding Source

The fiscal impact for the five-year term is $5,639,550. The current contract, *8880-1/21*, is valued at $3,026,901.67 for a ten year and six-month term and expires on November 30, 2021. The allocation under this contract is higher than the current contract due to higher prices, when compared to current pricing, and increased quantities which are necessary for the growing number of inmates requesting

kosher meals. Also, frozen kosher meals are used to substitute regular inmate meals during emergencies, including but not limited to hurricanes and the Coronavirus pandemic.

Department	Allocation	Funding Source	Contract Manager
Corrections and Rehabilitation	$5,639,550	General Fund	Andrew Bryant
Total:	**$5,639,550**		

Track Record/Monitor
Sophia Cunningham of the Internal Services Department 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 exercise all provisions of the contract, including any cancellation, or extension provisions, pursuant to Section 2-8.1 of the County Code and Implementing Order 3-38.

Vendor Recommended for Award
An Invitation to Bid was issued under full and open competition. Eight bids were received in response to the solicitation including three "No Bids." Award is recommended to Prawn Seafoods, Inc. dba Sunset Foods, a certified Small Business Enterprise firm.

Vendor	Principal Address	Local Address*	Number of Employee Residents 1) Miami-Dade 2) Percentage	Principal
Prawn Seafoods, Inc. dba Sunset Foods (*SBE*)	6894 NW 32 Avenue Miami, FL	Same	6 60%	Jeffrey Wine

*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 or Did Not Bid

Vendor	Local Address	Reason for Not Recommending
Gourmet Kosher, LLC. (*SBE*)	Yes	Product offered did not meet the scope requirements.
Independent Living Systems, LLC.	Yes	
Influctec, Inc.	No	Price is higher than the recommended bidder
Trinity Services Group, Inc.	No	
All-Brand Supplies Distributor, Inc.	Yes	No Bid
Out of the Shell, LLC. dba Yangs 5th Taste	No	
Schwan's Food Service, Inc.	No	

*A "No-Bid" means the vendor responded indicating it will not be providing an offer.

Due Diligence
Pursuant to Resolution No. R-187-12, due diligence was conducted in accordance with the Internal Services Department'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. The lists that were referenced included convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings related to vendor responsibility.

Pursuant to Resolution No. R-140-15, prior to re-procurement, a full review of the scope of services was conducted to ensure the replacement contract reflects the County’s current needs. The review included conducting market research, posting a draft solicitation for industry comment, and holding meetings and drafting sessions with the user department. The scope of services was updated to include increased quantities to guarantee adequate kosher meals for the County’s inmate population due to recent waiver of restrictions on vetting an inmate’s religious practices. Also, the scope of services was updated to exclude the Gourmet Kosher brand relative to the evaluation results under Solicitation FB-01708.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies.
- The Small Business Enterprise (SBE) Bid Preference and Local Preference applied.
- The Living Wage does not apply, as the service provided is not covered by the Living Wage Ordinance.

JD Patterson
Chief Public Safety Officer

Memorandum

MIAMI-DADE COUNTY

Date: December 1, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Subject: Supplemental Information Recommendation for Approval to Award Contract No. FB-02008, Frozen Kosher Meals

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Attached for your consideration is the Findings and Recommendations by the Hearing Examiner that: (1) Gourmet Kosher, LLC (Gourmet) protest be denied (2) the County did not act in arbitrary and capricious manner in issuing the Solicitation and (3) Prawn Seafoods, dba Sunset Foods be recommended for the award.

Bid Protest

Bid protest for recommendation to award a contract to Prawn Seafoods Inc. dba Sunset Foods for Frozen Kosher Meals was filed with the Clerk of the Board on September 20, 2021, and notice was sent to all bidders thereafter. Gourmet filed a Bid Protest (Exhibit A) on September 23, 2021, stating that the solicitation for the contract was not conducted under full and open competition, as the procedure for recommendation for approval of the award of the contract was biased against Gourmet. Furthermore, the recommendation for approval of the award states that the product offered by Gourmet did not meet the scope requirements.

The Findings and Recommendation of the Hearing Examiner (Exhibit B) determined that the County's recommendation was a reasonable exercise of discretion and judgment given the totality of the facts and circumstances.

Attachments

JD Patterson
Chief Public Safety Officer

Exhibit A

KEYSTONE LAW FIRM, P.A.
12865 West Dixie Highway
Second Floor
North Miami, Florida 33161

FRANK WOLLAND, ESQ.
Fwolland@keystonelawpa.com
ELIEZER S. POUPKO
epoupko@keystonelawpa.com

Tel: 305-899-8588
Fax: 305-892-8434

September 23, 2021

Clerk of the Board of County Commissioners
111 NW 1st Street, 17th Floor, Suite 202
Miami, FL 33128
(*Via email and hand delivery*)

RE: **Intent to Protest; Solicitation FB-02008 – Frozen Kosher Meals**

To the Clerk of the Board,

This office represents Gourmet Kosher, LLC, a vendor whose bid was not recommended for award with regard to Solicitation FB-02008 – Frozen Kosher Meals, a contract for the purchase of kosher meals for the Miami-Dade County Corrections and Rehabilitation Department.

This letter shall serve as official notice of our client's intent to file a formal bid protest with regard to the award recommendation for the above contract, dated September 20, 2021. The grounds for this protest include the following: The solicitation for the contract was not conducted under full and open competition, as the procedure for recommendation for approval of the award of the contract was biased against Gourmet Kosher, LLC, which was denied without good cause a fair opportunity to compete for the contract.

More particularly, the Recommendation for Approval of the award states that the product offered by Gourmet Kosher, LLC "did not meet the scope requirements." This decision was arbitrary and capricious with regard to our client's bid for the award. An independent broker had previously provided samples of Gourmet Kosher products for evaluation by the Food Service Bureau of the County Correction and Rehabilitation Department, and these samples were deemed of insufficient quality. However, these samples were not provided directly by Gourmet Kosher, LLC, and they were not representative of the much higher quality meals that were proposed in our client's bid for the above contract. The decision to exclude Gourmet Kosher, LLC meals from consideration for the award was based on false presumptions and misrepresentation of the quality of the meals offered for the contract, and the award recommendation should therefore be reconsidered.

A check for the filing fee of $5,000.00 is included with the hand-delivered copy of this letter. Thank you very much for your attention to this matter.

Very Truly Yours,

Frank Wolland, Esq.

Copies furnished via email to:

clerk.board@miamidade.gov
wulwickj@gmail.com
mhayes@gourmetkosher.us
jhenderson@ilshealth.com
jeff@sunset-foods.com
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33751

Keystone Law Firm PA
Operating Account
12865 West Dixie Highway, 2nd Floor
North Miami FL 33161-4800
(305) 899-8588

CITY NATIONAL BANK OF FLORIDA

63-436/660

September 23, 2021

PAY TO THE ORDER OF Clerk of the Board of County Commissioners $5,000.00

Five thousand & 00/00 DOLLARS

MEMO Bid protest filing fee/FB-02008-Gourmet Kosher

AUTHORIZED SIGNATURE

Exhibit B

Harvey Ruvin
CLERK OF THE CIRCUIT AND COUNTY COURTS
Miami-Dade County, Florida

CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK CENTER
SUITE 17-202
111 N.W. 1st Street
Miami, FL 33128-1983
Telephone: (305) 375-5126

October 25, 2021

Frank Wolland
Keystone Law Firm
12865 West Dixie Highway, 2nd Floor
North Miami, Florida 33161

Re: FB-02008 – Frozen Kosher Meals

Dear Mr. Wolland,

Forwarded for your information is a copy of the Findings and Recommendation filed by Judge Sandy E. Karlan, Hearing Examiner, in connection with the bid protest hearings, held on Wednesday, October 20, 2021.

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

HARVEY RUVIN, Clerk
Circuit and County Courts

By Melissa Adames
Melissa Adames, Director
Clerk of the Board Division

MA/dmcb

CC: Honorable Chairman Jose "Pepe" Diaz and Members, Board of County Commissioners (via email)
Honorable Daniella Levine Cava, Mayor, Miami-Dade County (via email)
Jimmy Morales, Chief Operations Office, Office of the Mayor (via email)
Edward Marquez, County's Chief Financial Officer, Office of the Mayor (via email)
Geri Bonzon-Keenan, County Attorney (via email)
Gerald Sanchez, First Assistant County Attorney (via email)
Eduardo Gonzalez, Assistant County Attorney (via email)

Keoki Baron, Assistant County Attorney (via email)
Jenelle Snyder, County Attorney's Office (via email)
Elizabeth Alfonso Ruiz, County Attorney's Office (via email)
Karla Harpaul, County Attorney's Office (via email)
Manuela Hernandez, County Attorney's Office (via email)
Adeyinka Majekodunmi, Commission Auditor (via email)
Terrence Murphy, Contract Oversight Specialist, Office of Inspector General (via email)
Alex Munoz, Director, Internal Services Department (via email)
Namita Uppal, Chief Procurement Officer, Internal Services Department (via email)
Lydia Osborne, Strategic Procurement Division Director, Internal Services (via email)
Sophia Cunningham, Procurement Contracting Manager, Internal Services (via email)
Reginald Hires, Procurement Quality Control Specialist, Internal Services (via email)
Tiffany Taylor, Business Management Systems Analyst, Internal Services (via email)
Christopher Grant-Heriques, Procurement Contracting Officer 2, Internal Services (via email)
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Billy@sunset-foods.com, Prawn Seafoods, Inc.
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hbaptiste@influctec.com, Influctec
Christina.Muro@trinityservicesgroup.com, Trinity Services Group, Inc.

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

IN RE: CONTRACT NO. FB-02008,
FROZEN KOSHER MEALS: GOURMET
KOSHER, LLC'S PROTEST OF THE
RECOMMENDATION OF AWARD
_____/

HEARING EXAMINER FINDINGS AND RECOMMENDATION

This Bid Protest arises from a solicitation for the award of Contract No. FB-02008, a contract for the purchase of frozen kosher meals for the Miami-Dade County Corrections and Rehabilitation Department ("MDCR"). Petitioner, Gourmet Kosher, LLC ("Gourmet Kosher"), filed a formal Bid Protest against the recommendation for award of the contract, and an evidentiary hearing was held on October 20, 2021, during which the Hearing Examiner heard testimony and arguments of counsel.

The material facts in this matter are largely undisputed, as is the applicable legal standard for review of the County's recommendation for award of the contract. The main issue presented for the Hearing Examiner is whether the County's recommendation, given the totality of facts and circumstances on the record, was a reasonable exercise of discretion and judgment, as the County argues, or an unreasonable decision based on a mistake about Gourmet Kosher brand ("GK brand") products, which rises to the level of arbitrary and capricious action, as Gourmet Kosher argues.

The Hearing Examiner finds that the County's recommendation was a reasonable exercise of discretion and judgment given the totality of the facts and circumstances on the record as set forth in this Hearing Examiner Findings and Recommendations.

The two witnesses for Gourmet Kosher, Jeremy Wulwick and Mark Hayes, both testified that in their opinion, the County made a mistake in disqualifying all GK brand meals from competing for Solicitation FB-02008. Mr. Wulwick testified that he reached out to Christopher

Grant-Henriques, a County Procurement Contracting Officer, prior to the advertising of this solicitation in an attempt to discuss providing GK brand meals directly to MDCR, as opposed to MDCR purchasing through distributors. Mr. Wulwick also testified about Gourmet Kosher's involvement in the earlier rejected solicitation, FB-01708, stating that he had been in contact with the distributor, National Food Group, Inc. ("National"), regarding their bid of GK brand meals for that solicitation. Mr. Wulwick indicated that he knew the meals bid by National were lower quality meals, but he also knew that two other bidders for the contract, JNS Foods, LLC ("JNS") and BP Food Services were offering higher priced GK brand meals that he believed would satisfy the County's needs and demands. Nevertheless, he did not stop "National" from submitting the samples of their lowest quality meal.

Mark Hayes testified about the different types of kosher meal products manufactured and sold by Gourmet Kosher under the GK brand. He indicated that there were five (5) different quality levels of prepared meals, ranging from high-quality "VIP" meals served on china with flatware, to the "lower-end" kosher meals marketed for sale to correctional institutions. Among these correctional meals, Mr. Hayes testified that there was a lower quality meal which Gourmet Kosher generally sold at between $2.50-$3.50, and a higher quality product generally sold to ILS institutions at between $4.00-$5.00. Mr. Hayes testified that the differences between the quality of these meals is clearly apparent, given that the protein in lower-end meals was made from a processed, ground-up product, while the higher quality meals were made from portions pressed into a "loaf" to be sliced and served. Mr. Hayes further testified that he had been in contact with Jill Paiewonsky of MDCR on three occasions to discuss providing GK brand products, including the higher-quality meals that Gourmet Kosher sought to market directly to MDCR, and he stated

that Ms. Paiewonsky never reported any issues or problems with GK brand products to him. This testimony was controverted by Ms. Paiewonsky.

Ms. Paiewonsky, who is the Acting Food Service Bureau Supervisor 3 at MDCR, and who has been with the county for 33 years and the last 22 years as a Food Supervisor 2, testified that she had given "feedback to the manufacturer a few times". Specifically, she testified that she spoke with Mr. Hayes and told him that Corrections was having issues with the food and that the inmates don't like the food. She testified that Mr. Hayes said, "maybe I should add more vegetables." Ms. Paiewonsky also testified that she is very familiar with the GK brand as JNS, an independent distributor has been under contract to the County for almost five (5) years as a secondary vendor to the primary vendor, MealMart. It is the job of the secondary vendor to provide frozen kosher meals on the occasion when the primary vendor cannot do so. When asked to provide those secondary meals, JNS provided GK brand meals. Significantly, JNS is one of the companies that bid on the initial solicitation with GK brands at a higher price than National.

Ms. Paiewonsky further testified that every time MDCR served the GK brand meals provided by JNS there were immediate grievances filed by correctional inmates. 19 separate grievance reports were entered into the record as exhibits, most dating from January 2017. *See* County Comp. Exh. 4. She further added that each time they have had to serve a GK meal, they get 20-30 grievances and that she is the one who had to address them and that she has not had any grievances filed about the MealMart food. In many of those grievances, County inmates indicated that they had not eaten for days at a time because of the low quality of the GK Brand meals served. See id. at 1-6, 8-9. Ms. Paiewonsky also testified about an evaluation conducted on samples of GK brand meals provided by National as part of the earlier solicitation, FB-01708, which was eventually withdrawn, and in which Gourmet Kosher did not directly participate.

It was her testimony that under the original solicitation, FB-01708, the County requested samples only from National, the lowest bidder on the initial solicitation. She testified this was the process that was established to evaluate bids. In this process, the County officials are required to sample the food that is being offered by the lowest bidder. It is not the County responsibility to try all of the products of all bidders, especially not if they come in at a higher price.

It was undisputed that the evaluation of these meals was highly unfavorable, as described in a memorandum dated June 30, 2021, that Ms. Paiewonsky signed (Petitioner's Exhibit 5, County's Exhibit 2). The County's evaluation team, which included Ms. Paiewonsky and three other experienced food service Corrections Department personnel, ultimately concluded that the GK Brand could not be deemed acceptable and recommended that any bid offering the brand be rejected. As Ms. Paiewonsky testified at the protest hearing, all four members of the evaluation team uniformly agreed that not a single one of the seven GK Brand meals sampled could even be considered edible. *See also* County Exh. 2, Corrections Department Memorandum dated June 30, 2021, at 2.

When asked why she did not sample more expensive brands of GK products or inquire regarding their availability, she indicated that it was not part of the protocol and that the County was already paying a higher price than the lowest bidder for what appear to be the same meals when she ordered from the secondary vendor (JNS which provided GK meals).

Finally, Sophia Cunningham, a Miami-Dade County Procurement Contracting Manager, testified regarding the process and decision to reject all bids for FB-01708. She stated that three of the five bidders on that solicitation offered GK brand products, and that since the brand was not listed as an "approved equal," MDCR was required to conduct sampling pursuant to Section 2.7 of the terms and conditions of the Solicitation. She testified that "[b]idder(s) may be required to submit a sample of equal products proposed for evaluation by, and at no cost to the County" (Petitioner's Exhibit 3, County's Exhibit 1, p. 12).

Thereafter, on July 22, 2021, the County adopted the evaluation team's findings and recommendations, and issued the subsequent Solicitation at issue here (No. FB-02008). As recommended by the evaluation team, the Solicitation expressly excluded GK Brand meals, though it did not prohibit any specific individual company from participating, nor did it prohibit proposers from offering any other brand besides the GK Brand for consideration. Gourmet Kosher submitted a bid for the Solicitation, but the bid was not considered because it offered GK Brand meals. The award was ultimately recommended to Prawn Seafoods, Inc., d/b/a Sunset Foods.

GK argues that county officials were mistaken in assuming that all GK brand meals were the same quality as the ones with which MDCR officials were familiar which led to an inaccurate conclusion. This mistaken identity is an abuse of discretion, arbitrary and capricious. They do not suggest that the county's decision was in any way fraudulent. GK suggests that under the circumstances the County did not go far enough to determine the true quality of GK's products before disqualifying all meals packaged under that brand. GK is further suggesting that the County should have a more diligent process which might have avoided their conclusion.

The County argues that the sampling of meals provided by National, the lowest bidder, along with the past grievances about the meals provided by JNS (which were produced by GK), were sufficient to make the decision to disqualify all GK brand meals reasonable under the circumstances.

Discussion

As the basis for its bid protest, Gourmet Kosher attacks the County's decision to exclude GK Brand meals from consideration in the Solicitation, claiming that the GK Brand meals it offered for the Solicitation were of a higher quality and should have been considered by the County. To be sure, though, Gourmet Kosher does not claim that this decision was made in bad faith; rather, Gourmet Kosher claims the decision warrants reversal because it was arbitrary and capricious. But this position presents Gourmet Kosher with a very high burden, which it has failed to meet.

As a general matter, "[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." *Dep't of Transp. v. Groves-Watkins Constr.*, 530 So. 2d 912, 913 (Fla. 1988); *see also Miami-Dade County v. Church and Tower, Inc.*, 715 So. 2d 1084, 1089 (Fla. 3d DCA 1998) ("So long as such a public agency acts in good faith, even though they may reach a conclusion on facts upon which reasonable men may differ, the courts will not generally interfere with their judgment, even though the decision reached may appear to some persons to be erroneous."). Given this wide discretion, in considering a bid protest, "the hearing officer's sole responsibility is to ascertain whether the agency acted fraudulently, arbitrarily, illegally or dishonestly." *Groves-Watkins Constr*, 530 So. 2d at 914.

To establish that the decision at issue was arbitrary and capricious (the applicable standard here), the protestor must show that it was "***not supported by facts or logic,***" and was "***taken without thought or reason or irrationally.***" *Agrico Chemical Co. v. Dep't of Env't. Regulation*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978) (emphasis added), *overruled on other grounds as recognized in St. Johns River Water Mgmt. Dist. v. Consol.-Tomoka Land Co.*, 717 So. 2d 72 (Fla. 1st DCA 1998). In sum, "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) (citation, internal quotations omitted) (emphasis added).

Here, there was thought, reason, and experience underlying the County's decision, and the County provided a coherent and reasonable explanation for the exercise of its discretion. As part of the Prior Solicitation, the County designated an experienced evaluation team that performed a thorough evaluation of seven different sample meals belonging to the GK Brand. The evaluation team uniformly agreed that all seven meals were not only of an unacceptable quality – they were not even edible. Critically, these findings were consistent with the poor results that the County has had in all of its previous experiences with GK Brand meals, as reflected by the numerous formal grievances that have

been filed by County inmates over the years. Notably, like the evaluation team, the grievances show several County inmates who have also characterized the GK Brand meals as not edible.

After taking all of this into account, the evaluation team prepared a detailed four-page memorandum that summarized all of its findings and provided the bases for its formal recommendation to the County's Procurement Division, which was ultimately adopted. In all, this process undertaken by the County evinces fact-based, rational thought. And the evaluation memorandum that was the penultimate culmination of this process presents a coherent and reasonable explanation for the County's decision in pursuing the subsequent Solicitation in the manner it did. In the end, the County made a well-supported judgment call that, given all of the circumstances, it would forego any further consideration of GK Brand meals regardless of what company might seek to offer it.

Importantly, at no point in these proceedings has Gourmet Kosher ever disputed the assessments of the specific GK Brand meals that were previously served to County inmates or evaluated as part of the Initial Solicitation as inedible. Quite the contrary, at the protest hearing, Gourmet Kosher went to great lengths to explain that the specific GK Brand meals that the County has experienced thus far are a "low quality" product—indeed, by far the lowest quality product it offers—and are in no way representative of the GK Brand as a whole. In fact, both of Gourmet Kosher's managers testified that the difference between those GK Brand meals and the other purportedly "higher grade" meals it offers is essentially "night and day".

The applicable standard here requires the undersigned to consider what, if anything, formed the basis for the County's decision. As detailed above, the County based its decision on its actual—***and only***—experiences with the GK Brand. Under these circumstances, in order to conclude that there was no rational basis for the County's decision, the undersigned would have to completely disregard the County's actual experiences with the GK Brand, or that this Hearing Examiner should substitute her opinion of what is the proper protocol or procedure to evaluate bids.

In conclusion, where a food brand has put into the marketplace what it describes as a "low quality" product and by far its worst offering, it is neither unreasonable nor irrational for a consumer who has encountered that product and deemed it to be inedible to then decide to not revisit that food

brand again. That is what the County has decided here. One wonders why GK allowed National to submit its lowest quality product having been previously warned about its lack of quality by the County. While the undersigned sympathizes with Gourmet Kosher, it is simply not the undersigned's role in this bid protest context to second guess the judgment of the County as to the merits or wisdom of such a procurement decision. *See Church and Tower, Inc.*, 715 So. 2d at 1089 (holding that it is not enough to overturn a public body's contracting decision simply because "reasonable men may differ" as to the conclusion reached, and even if "the decision reached may appear to some persons to be erroneous").

Recommendation

Based on the foregoing, the undersigned Hearing Examiner finds that the County did not act in an arbitrary and capricious manner in issuing the Solicitation and recommending Prawn Seafoods, d/b/a Sunset Foods for the award thereto. Accordingly, the undersigned recommends that Gourmet Kosher's bid protest be denied.

Dated: October 25, 2021

Judge Sandy E. Karlan, Hearing Examiner

MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: December 1, 2021

FROM: Geri Bonzon-Keenan
County Attorney

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

Please note any items checked.

_____	**"3-Day Rule" for committees applicable if raised**
_____	**6 weeks required between first reading and public hearing**
_____	**4 weeks notification to municipal officials required prior to public hearing**
_____	**Decreases revenues or increases expenditures without balancing budget**
_____	**Budget required**
_____	**Statement of fiscal impact required**
_____	**Statement of social equity required**
_____	**Ordinance creating a new board requires detailed County Mayor's report for public hearing**
___✓___	**No committee review**
_____	**Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve**
_____	**Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(8)
12-1-21

RESOLUTION NO. R-1159-21

RESOLUTION APPROVING AWARD OF CONTRACT NO. FB-02008 TO PAWN SEAFOODS, INC. DBA SUNSET FOODS FOR THE PURCHASE OF FROZEN KOSHER MEALS FOR THE MIAMI-DADE CORRECTIONS AND REHABILITATION DEPARTMENT WITH AN AMOUNT NOT TO EXCEED $5,639,550.00, FOR A FIVE-YEAR TERM; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO GIVE NOTICE OF THIS AWARD TO PAWN SEAFOODS, INC. DBA SUNSET FOODS, ISSUE THE APPROPRIATE PURCHASE ORDERS TO GIVE EFFECT TO SAME AND EXERCISE ALL PROVISIONS OF THE CONTRACT, INCLUDING ANY CANCELLATION OR EXTENSION PROVISIONS, PURSUANT TO SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA AND IMPLEMENTING ORDER 3-38

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves award of Contract No. FB-02008 to Pawn Seafoods, Inc. dba Sunset Foods for the purchase of Frozen Kosher Meals for the Miami-Dade Corrections and Rehabilitation Department with an amount not to exceed $5,639,550.00 for a five-year term; and authorizes the County Mayor or County Mayor's designee to give notice of this award to Pawn Seafoods, Inc. dba Sunset Foods, issue the appropriate purchase orders to give effect to same and exercise all provisions of the contract, including any cancellation, renewal or extension provisions, pursuant to section 2-8.1 of the Code of Miami-Dade County, Florida and Implementing Order 3-38. A copy of the contract document is on file with and available upon request from the Internal Services Department, Strategic Procurement Division.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Raquel A. Regalado** and upon being put to a vote, the vote was as follows:

Jose "Pepe" Diaz, Chairman	**aye**		
Oliver G. Gilbert, III, Vice-Chairman	**aye**		
Sen. René García	**aye**	Keon Hardemon	**aye**
Sally A. Heyman	**aye**	Danielle Cohen Higgins	**aye**
Eileen Higgins	**aye**	Joe A. Martinez	**aye**
Kionne L. McGhee	**aye**	Jean Monestime	**aye**
Raquel A. Regalado	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of December, 2021. 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

HARVEY RUVIN, CLERK

Melissa Adames
By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Oren Rosenthal