

Department: Facilities Development and Operations

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to:

- A) Ratify the selection of Motorola Solutions, Inc., as the highest ranked vendor for the P25 Trunked Simulcast Countywide Public Radio System project, and
- B) Authorize staff to commence negotiations with Motorola Solutions, Inc.

Summary: On May 21, 2015, two proposals were received in response to a Request for Proposal (RFP) for this Project from Harris Corporation and Motorola Solutions, Inc. Those two proposals were received by a Technical Evaluation Committee (TEC) whose purpose was to review each vendor's proposal for compliance with the technical requirement of the RFP. In addition to the consultant, the TEC was comprised of technical and operational representatives of Facilities Development & Operations, Palm Beach County Fire Rescue and the Sheriff's Office. In addition to the proposals received, the vendors made presentations to the TEC and afterward the TEC prepared a report known as the Technical Evaluation Report. On July 16, 2015, the Selection Committee comprised of Bob Weisman, County Administrator, Chief Jeff Collins PBC Fire-Rescue, and Major Ron Mattino Sheriff's Office met and considered the Technical Evaluation Report, Financial Report (cost proposals), and references. The Selection Committee also heard presentations from the vendors. Based on pre-determined evaluation criteria, the firms were scored and Motorola Solutions, Inc. was the highest ranked firm by the Selection Committee. Upon Board ratification, Staff will commence contract negotiations with Motorola Solutions, Inc. Upon satisfactory completion of those negotiations, Staff will present a contract to the Board for approval. **(Capital Improvements Division) Countywide (MJD)**

Background and Policy Issues: Proposals for this project were requested in order to provide for the implementations of a P25 compliant public safety radio system in accordance with previous direction from the Board on April 7, 2015. On May 21, 2015, proposals were received from Motorola Solutions, Inc. and Harris Corporation, and on June 23 and 24, 2015, the vendors made presentations to a Technical Evaluation Committee which consisted of County Staff, the County's project consultant, and representatives from PBSO and Fire-Rescue. On July 16, 2015, each firm made a presentation to the Final Selection Committee. The Committee reviewed and evaluated the firms based on predetermined selection criteria and ranked the vendors based on that criteria. The results of the selection committee were posted on July 17, 2015, and the second ranked vendor protested the selection to the Director of Purchasing. The Director of Purchasing denied the protest, and the vendor did not request a hearing before a special master as provided for in the Purchasing Code.

Attachments:

1. Committee Ranking and Scoring Sheets
2. Harris protest July 23, 2015
3. Purchasing Director's August 12, 2015, response to protest

Recommended by:

Department Director

Date _____

Approved by:

County Administrator

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs					
External Revenues					
Program Income					
(County)					
In-Kind Match (County					
NET FISCAL IMPACT					
# ADDITIONAL FTE					
POSITIONS					
(Cumulative)					
Is Item Included in Current Budget:	Yes		No		

Budget Account No: Fund Dept. Unit Object Program

B. Recommended Sources of Funds/Summary of Fiscal Impact:

All expenses associated with the P25 Migration will be funded from the 800 MHz System Renewal/Replacement Fund which is made up of annual renewal/replacement contributions by PBSO, FR, county departments, cities who have direct connect agreements on the existing County system as well as PBSO generated \$12.50 funding. No new appropriations are anticipated.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:

OFMB 8/21 Contract Development and Control 8/24/15

B. Legal Sufficiency:

Assistant County Attorney 8/25/15

C. Other Department Review:

Department Director

**P25 TRUCKED SIMULCAST COUNTYWIDE
PUBLIC SAFETY RADIO SYSTEM
FINAL SELECTION SCORE TALLY SHEET**

	Harris Corporation	Motorola Solutions
Robert Weisman	2	1
Major Mattino	2	1
Jeff Collins	2	1
TOTALS	6	3

RANKED ORDER

2

1

Recorded by:

J. Chesh

Date:

7-16-15

P25 TRUCKED SIMULCAST COUNTYWIDE
PUBLIC SAFETY RADIO SYSTEM
FINAL SELECTION SCORE TALLY SHEET

	Evaluation Criteria	Max. Pts.	Harris Corporation	Motorola Solutions
#1	Technical Solution, Performance and Experience in System Delivery/Installation	40	20	40
#2	Performance and Experience in Maintenance Service	35	25	35
#3	Price Proposal	25	0	25
GRAND TOTAL		100	45	100

RANKED ORDER (ORDINAL)

2

1

Committee Member RON MATTINO

Date: 7-16-15

P25 TRUCKED SIMULCAST COUNTYWIDE
PUBLIC SAFETY RADIO SYSTEM
FINAL SELECTION SCORE TALLY SHEET

	Evaluation Criteria	Max. Pts.	Harris Corporation	Motorola Solutions
#1	Technical Solution, Performance and Experience in System Delivery/Installation	40	0	40
#2	Performance and Experience in Maintenance Service	35	30	35
#3	Price Proposal	25	20	17
GRAND TOTAL		100	50	92

RANKED ORDER (ORDINAL)

2

1

Committee Member JEFFREY P COLLINS

Date: 7/16/2015

P25 TRUCKED SIMULCAST COUNTYWIDE
PUBLIC SAFETY RADIO SYSTEM
FINAL SELECTION SCORE TALLY SHEET

	Evaluation Criteria	Max. Pts.	Harris Corporation	Motorola Solutions
#1	Technical Solution, Performance and Experience in System Delivery/Installation	40	- 0 -	40
#2	Performance and Experience in Maintenance Service	35	30	35
#3	Price Proposal	25	20	20
GRAND TOTAL		100	50	95

RANKED ORDER (ORDINAL)

2

1

Committee Member WEISMAN

Date: 7/16/15

Expanded Evaluation Criteria

Evaluation Criteria #1 includes, but is not limited to;

- Technical solution (i.e.: redundancy, resiliency, coverage, etc);
- proposed solution's compliance with RFP functional requirements;
- vendor's experience with similar size public safety systems;
- vendor's experience with delivering a system meeting RFP requirements while maintaining interoperability with partners who have systems of different manufactures and non-P25 systems;
- recommendations and feedback of project owners/past and present clients;
- approach to Palm Beach County's P25 migration.

Evaluation Criteria #2 includes, but is not limited to:

- maintenance and emergency response solution;
- approach to meeting the on-going emergency response (alarms) and maintenance requirements of the RFP;
- demonstrated experience in providing an equivalent level of emergency response and maintenance performance;
- recommendations and feedback of past and present clients.

Evaluation Criteria #3 includes, but is not limited to:

- one time capital cost;
 - annual response/service/maintenance cost over 15 year life cycle.
-

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July 23, 2015

VIA HAND DELIVERY

Kathleen M. Scarlett
Director
Purchasing Department
Palm Beach County
50 S. Military Trail
Suite 110
West Palm Beach, FL 33415

**Re: Formal Written Protest of Intended Award of Contract for RFP for Palm
Beach County APCO P25 Trunked Simulcast Countywide Safety Radio
System, Project No. 14212**

Dear Ms. Scarlett:

Harris Corporation, RF Communications Division ("Harris"), by and through its undersigned counsel, and pursuant to Section 2-55 of the Palm Beach County Code of Ordinances, respectfully submits this written bid protest to the Palm Beach County Letter of Intent to Award, dated July 16, 2015, to award the contract arising out of the Request for Proposals for the Palm Beach County APCO P25 Trunked Simulcast Countywide Safety Radio System, Project No. 14212 (the "RFP") to Motorola Solutions Inc. (the "Letter of Intent").¹ True and complete copies of the RFP and Letter of Intent are attached hereto as **Exhibits A and B**, respectively. In support of this protest, Harris states that a contract award to Motorola Solutions Inc. ("Motorola") would be arbitrary and capricious and in error because: (i) the County improperly crafted the RFP specifications and requirements so as to improperly and deliberately create a bias in favor of the County's desired awardee, Motorola; (ii) the County denied Harris critical information available to Motorola that was essential to the preparation of a compliant bid response; and (iii) the County's

¹ Harris reserves all rights to augment this bid protest and revise its bid protest grounds based on the late delivery of public records requested from Palm Beach County, or any other public records not delivered pursuant to previously filed public records requests made by Harris.

post-submission evaluation process for reviewing and scoring the RFP proposals was improper and biased against Harris, including entirely arbitrary scoring and unwarranted interference in the process by the City of Delray. **The result of such errors is that the County ignored a fully-compliant solution that provides the Palm Beach County taxpayers cost savings totaling \$7,500,000, while meeting all of the needs of the County's public safety agencies.**

I. STATEMENT OF FACTS.

A. RFP and Background

As described in the RFP, the County solicited proposals for a contractor to provide services to provision an APCO P25 trunked simulcast radio communications system (the "System"). The County issued the RFP for the replacement of the existing countywide public safety trunked simulcast radio system (the "Prior System"), which was not P25 compliant. The Prior System was acquired by the County from Motorola in 1998 without competition, through a sole source procurement. The Prior System went operational in 2000, and it was exclusively relied on by the County and multiple municipalities, including the City of Delray ("Delray"). In 2005, Motorola notified the County that the contract for the Prior System expired in December, 2009. However, the County failed to conduct a comprehensive analysis of the Prior System to ascertain viable renewal replacement options on the open market. As a result, when the Motorola contract for the Prior System was to expire, the County staff sought a sole source procurement for the renewal of a service contract with Motorola. In response, the Palm Beach County Office of Inspector General (the "Inspector General") found that a sole source award would be improper, and that the proper course of action was for the County to conduct an open competition in order to provide the requisite transparency and dispel "any notion that County staff used a ribbon and bow wrapped around exigent circumstances to justify a very costly sole source procurement." The RFP at issue here was the procurement mechanism that the County then turned to after receipt of the Inspector General's findings.

The purpose of the System is to support mission critical public safety radio communications countywide. Through the RFP, the County sought to provide enhanced two-way communications capabilities to all System users through the foreseeable future. The System serves the Palm Beach County Sheriff's Office, Palm Beach County Fire Rescue and County general government departments. Consequently, the selection/evaluation committee for the RFP (the "Selection Committee") was made up of representatives from these County departments.

Further, since the System serves as the primary medium for wide area emergency response and general government communication needs, the System is utilized by a number of local, state, and federal government entities. Importantly, for reasons explained further below, the City of Delray Beach is one of the government entities that heavily utilizes the System. Officially classified as one of three "Hub Partner" cities, Delray uses the County's SmartZone Controller portion of the System on a full-time basis, and pays the County an annual fee for such use of the

System. In addition, the three Hub Partner cities all entered into separate interlocal agreements with the County, wherein the cities indicated their intent to continue the current functional relationship with the System and allowed for the Hub Partners to use the RFP as the procurement mechanism for replacement of the cities' existing radio systems with P25 compliant radio systems. The importance of the input from these Hub Partners, such as Delray, on the RFP procurement process was highlighted in the RFP, which stated that there would be a "high level of internal coordination that will be required between the County and the . . . Hub Partners." Consequently, two representatives from each Hub Partner were invited to participate in the technical evaluation and Selection Committee processes as non-voting members with invitations to attend all of the technical evaluation and Selection Committee meetings.

B. Relevant Bid Specifications

The RFP listed numerous specifications and requirements for any proposals submitted in response to the solicitation. However, only listed here are those specifications primarily relevant to the protest grounds asserted below.

First, among other requirements, the RFP required each proposer to generally state their respective experience delivering P25 Trunked Radio System projects. For each prior reference project listed, the proposer was only required to submit the project name, status, frequency band, and contact information for a contact at the project site. There were no limitations as to the size or scope of reference projects that were to be listed, nor was there a published uniform process for how such references would be evaluated by the County.

The RFP also required that any solution proposed under the RFP utilize the Aviat microwave method in order to deliver communications from site to site. This Aviat solution was the method in-place utilized by Motorola under the Prior System.

C. Bid Responses

The solicitation closed on May 21, 2015, and the County received proposals from two bidders: Harris (the "Harris Proposal") and Motorola (the "Motorola Proposal"). True and correct copies of the initial Harris and Motorola proposals are attached hereto as **Exhibits C and D**, respectively. Both the Harris Proposal and the Motorola Proposal were found to be responsive by the County, although the Harris Proposal was priced as much as \$7,500,000 less than the Motorola Proposal.

D. Evaluation and Selection Process

The evaluation process for proposals submitted in response to the RFP was a multi-step process. First, within three (3) business days after the deadline to submit proposals, a County staff representative conducted a strictly objective ("pass/fail") review to determine if each proposal was responsive to the RFP. A responsive RFP is one which has been signed, submitted by the specified

submission time, and which has addressed all required elements of the RFP. In the review for responsiveness, there is no evaluation of the content or quality of the proposals, only that the proposal is complete and all required elements completed. Proposals deemed non-responsive would be rejected without further review or consideration. Both the Harris Proposal and the Motorola Proposal were found to be responsive.

The next step was review by the Selection Committee and Technical Evaluation Committee. The Selection Committee was made up of three evaluators, and conducted its evaluation according to the selection criterion established in the RFP. The proposal that received the highest rank by the Selection Committee would be recommended to the Board of County Commissioners for selection. The selection process consisted of two reviews: the first performed by the Technical Evaluation Committee and the second performed by the Selection Committee. The Technical Evaluation Committee reviewed only the technical solution component of each proposal and produced a Technical Evaluation Report after reviewing the proposals and receiving an oral presentation from each proposer. The Technical Evaluation Committee neither made recommendations nor ranked the proposals. At the conclusion of the review by the Technical Evaluation Committee, the County opened the price proposal component of each proposal and generated a Financial Evaluation Report.

The Selection Committee then received the Technical Evaluation Report and the Financial Evaluation Report, as well as related documents that formed the Selection Committee Package. A true and correct copy of the Selection Committee Package is attached hereto as **Exhibit E**. Prior to making its selection, the Selection Committee also heard an oral presentation from each proposer (the second oral presentation made by each proposer). The Selection Committee then scored each proposal according to the following criterion, as set out in the RFP: Technical Solution, Performance and Experience in System Delivery/Installation (worth a maximum of 40 points); Performance and Experience in Maintenance Service (worth a maximum of 35 points); and Price Proposal (worth a maximum of 25 points). The RFP also listed a number of factors that each criterion included, but was not limited to. There was no specific weighting as to any of these factors, just a general list of numerous conditions that each criterion would take into account.

The three members of the Selection Committee ended up scoring the Harris and Motorola proposals as follows:

Evaluator #1			
Evaluation Criteria	Max Pts	Harris	Motorola
Technical Solution, Performance and Experience in System Delivery/Installation	40	20	40
Performance and Experience in Maintenance Service	35	25	35
Price Proposal	25	0	25
Grand Total	100	45	100

Evaluator #2

Evaluation Criteria	Max Pts	Harris	Motorola
Technical Solution, Performance and Experience in System Delivery/Installation	40	0	40
Performance and Experience in Maintenance Service	35	30	35
Price Proposal	25	20	17
Grand Total	100	50	92

Evaluator #3

Evaluation Criteria	Max Pts	Harris	Motorola
Technical Solution, Performance and Experience in System Delivery/Installation	40	0	40
Performance and Experience in Maintenance Service	35	30	35
Price Proposal	25	20	20
Grand Total	100	50	95

Based on these scores, the Selection Committee recommended Motorola for award of the contract under the RFP.

II. LEGAL ANALYSIS AND BASIS FOR PROTEST

A. The RFP's Specifications and Requirements Were Improperly and Deliberately Biased in Favor of Motorola

It remains the concerted opinion of Harris that, from the beginning of the procurement process for the System, the County intended on granting the award to Motorola – the same vendor to which the County had previously and unsuccessfully attempted to award a sole-source contract: an attempted thwarted only because of the intervention of the Inspector General. This effort to ensure that Motorola received the contract award resulting from the RFP started with the RFP's basic specifications and requirements, which were crafted in such a manner as to provide an improper and deliberate bias in favor of Motorola. Specifically, the County biased the RFP in Motorola's favor by: (i) requiring each proposer to include specified technology favored by Motorola, the incumbent vendor, that resulted in a significant competitive advantage to Motorola arising from its existing contractual arrangements with this vendor providing preferential pricing terms; (ii) failing to include a list of concrete evaluation criteria by which the winning proposal would be selected, thereby ensuring that the County had the necessary flexibility to disregard criteria in which Motorola was weak; (iii) creating the standards for references in an unreasonable and subjective manner, such that Motorola's references were granted artificially greater weight

and references for other vendors were weakened; and (iv) ensuring that Motorola had exclusive access to traffic data integral to the formation of a proposal under the RFP, by refusing to provide such data to other vendors even though Motorola had access to such information as the incumbent vendor.

i. Aviat Requirement

The RFP's mandatory requirement to utilize Aviat microwave technology was an unnecessary requirement that unfairly granted Motorola a significant advantage over Harris. The County was expressly notified of this potential issue by Harris during the Q&A period, and elected to ignore the resulting unfair competitive advantage such decision provided Motorola. The result of such decision unfairly forced Harris to include a one million dollar option in its proposal.

A microwave network is the method by which communications are transmitted from site to site. The Aviat microwave solution is one particular method through which to undertake such deliveries. However, there exist various vendors for similarly-sized microwave solutions that provide more competitive pricing with identical functionality. Harris was also aware that Motorola had a pre-existing arrangement with Aviat, whereby Motorola had better pricing available to it for the Aviat microwave solution. Harris alerted the County to such concerns, and sought the flexibility to provide like communications functionality with alternate vendors to ensure responsiveness and the best price. Harris requested that the County -- at a bare minimum -- ensure that equal and fair pricing was provided to all potential bidders from this sole source provider if the County insisted on requiring the use of the Aviat solution.

Despite Harris' legitimate concerns regarding the potential for a better-priced alternative on the open market, and the unfair advantage known to the County that existed from Motorola relationship with Aviat, the County persisted in requiring that all proposals submitted under the RFP provide for the use of the Aviat solution. The County persisted in holding proposers to this requirement without any reasonable explanation as to why this particular solution was so necessary to the RFP, or any reasonable explanation as to why other sufficient alternatives did not exist. Most egregiously, the County declined to take any action to ensure that all potential bidders had access to equal pricing for the Aviat solution. The predictable result was that Motorola was improperly handed a significant advantage over all other potential bidders, and specifically a significant price advantage over any proposal that would be submitted by Harris.

ii. Lack of Concrete Evaluation Criteria

The RFP failed to provide sufficiently concrete specifications, such that prospective proposers were not properly put on notice as to how the County would ultimately select an awardee under the RFP. Additionally, the improper level of discretion given to the Selection Committee resulted in an intent to award a contract to a proposer submitting a substantially similar solution as the competing vendor, at a significantly increased price point.

It has long been an established requirement of Florida procurement law that proposers be made aware of all evaluation criteria and the weighting of those criteria before submission of their proposals:

Part of the reciprocity achieved under the competitive bidding process is achieved in the bid specifications and weighted bid evaluation criteria. *All potential bidders are to be advised in advance of the requirements to be met in order to receive the contract award, as well as the standards by which each bid will be evaluated by the agency and each standard's relative importance to the agency.* A potential bidder can then determine whether he can meet the bid specifications and criteria and thereby determine whether he wishes to go to the time, expense and trouble of preparing and submitting a fairly lengthy and detailed bid proposal. Therefore, central to the integrity and reciprocity of the competitive bid process is the requirement that an agency's action on a bid be expressed within the bid specifications and evaluation criteria which it created, and adhere to them during the selection process. In other words, should an agency accept a bid based on reasons not in the bid specifications and evaluation criteria that action would go to the integrity of the competitive bidding process and would be arbitrary and capricious.

Boozer v. Dep't of Health and Rehab. Servs., Case Nos. 89-2712BID, 89-2773BID, 1989 WL 644527, at *10 (Fla. Div. Admin. Hrgs., Recommended Order, July 21, 1989) (emphasis added). Indeed, if the evaluation criteria are not developed and disclosed in the solicitation prior to the deadline for receipt of proposals, the integrity of the competitive procurement process will be compromised because the evaluation criteria could be developed or changed after the proposals are opened and their contents made known to the procuring entity.

Here, the RFP evaluation criterion had three main components: (1) technical solution, performance and experience in system delivery/installation; (2) performance and experience in maintenance Service; and (3) Price Proposal. In the RFP, components 1 and 2 provided only a breakdown of the different factors that would be looked at in determining a score for the respective component. However, no specific point structure was provided. For example, it was not specified how much of the 40 possible points for each component were assigned "redundancy" or "vendor's experience with similar size public safety systems," etc. In the addenda to the RFP, the County confirmed this lack of concrete evaluation structure, stating that "there is no detailed point structure within each category," with the effect being that "the weight to be applied to each element of a category is at the discretion of the individual Selection Committee member."

This improper lack of concrete evaluation criteria, and consequent increased discretion provided to the Selection Committee, resulted in the County ensuring that it had the necessary flexibility to disregard the significance of any criteria where Motorola was weak and place greater emphasis on the points of strength in Motorola's proposal. The end result was that the County

ended up selecting a proposal for award that was substantially similar to that of the competitor's proposal in terms of technical ability, but much more expensive.

This improper exercise is first noticeable within the price rankings for each respective proposal. Harris offered the County a solution that was on its face \$5 million less than the solution proposed by Motorola, while still being compliant with the terms and technical requirements of the RFP. Furthermore, when factoring in the pricing discounts and price structure originally provided in its proposal, Harris offered the County a compliant solution that was as much as \$7,500,000 less than the overall cost of the solution offered by Motorola -- for a Harris solution that included the County as well as fully compliant offers for the three Hub Partner cities. However, despite offering a solution at a much lower cost, the Selection Committee's scoring sheet evaluating the two proposals demonstrates that one evaluator gave Harris a lower score for the "Price Proposal" category than Motorola, and another of the three evaluators gave Harris and Motorola the same score under the same "Price Proposal" category. Most egregiously, one evaluator gave Harris a score of "0" out of a possible 25 points for the "price" category -- despite the fact that Harris offered a compliant solution that was as much as \$7,500,000 less than the competing proposal from Motorola.

Furthermore, the Selection Committee was aware of the proposal prices in advance of scoring the technical and experience portions of the RFP responses. In this way, the Selection Committee was able to utilize the high degree of discretion it was improperly afforded under the RFP to adjust the technical/experience scores so as to overcome any advantage by Harris in pricing. Specifically, the Selection Committee placed artificially greater emphasis on perceived areas of weakness within Harris' proposal and perceived areas of strength within Motorola's proposal. For example, two members of the Selection Committee gave Harris a score of "0" out of a possible 40 points in the "Technical Solution, Performance and Experience in System Delivery/Installation" category -- despite the fact that Harris clearly addressed and demonstrated all three of the aforementioned traits. While the County may not have found Harris' presentation in these areas to be the most optimal, it is indisputable that Harris has, and certainly demonstrated in its proposal, "performance" at a satisfactory level in prior contracts of a similar nature. Harris Corporation generates approximately \$8.0 billion in annual revenues through its 23,000 employees in 125 countries and, in fact, has successfully implemented a myriad of P25 radio system conversions throughout the United States, including the most populous county in Florida. A rating of "0" in such a circumstance demonstrates the County's abuse of the lack of concrete evaluation criteria deliberately left out of the RFP. This abuse becomes especially clear when contrasted with the Selection Committee's scores of the Motorola proposal. In the same "Technical Solution, Performance and Experience in System Delivery/Installation" category, the Selection Committee gave Motorola perfect scores of "40." While the County was fully able to determine that Motorola offered the more optimal solution in this category, the fact that similar technical proposals were given such drastically different scores -- with one receiving an effective rating of "perfect" and the other receiving an effective rating of "completely deficient" -- is strong evidence of an abusive use of lax evaluation criteria.

More evidence of this abuse of improper discretion is found in the arbitrary scoring of the Harris proposal. The Selection Committee was made up of three evaluators, each receiving the exact same package with the exact same proposals from the respective proposers. However, from the scores given to the Harris proposal, it is almost impossible to believe that each evaluator was scoring the same proposal. One evaluator gave Harris a score of "0" out of 25 possible points for the "price" category (effectively stating that Harris' price was completely unacceptable), while the other two evaluators gave Harris a score of "20" under the price category. The arbitrary nature of the Selection Committee's scores was also present in the evaluation of the "Technical Solution, Performance and Experience in System Delivery/Installation" category. In that category, one evaluator gave Harris' proposal a rating of "20" out of a possible 40 points. The other two evaluators gave Harris a score of "0" in the exact same category (effectively stating that Harris did not have any applicable experience, which is an absolutely unbelievable and unsupportable proposition). Taken collectively, a comparison of the Selection Committee scores has no reasonable and justifiable basis. Clearly, the RFP failed to provide the evaluators with a concrete and consistent evaluation methodology and were not given any guidelines or training on how to score proposals objectively. Accordingly, the only rational conclusion is that the RFP evaluation process was not an objective, unbiased review of the submitted proposals.

Therefore, as established above, the RFP's lack of concrete and consistent criteria for the evaluation of proposals submitted under the RFP resulted in an improper bias in favor of Motorola. Consequently, the County may not lawfully issue an award under the RFP to Motorola.

iii. Unreasonably Subjective and Uncertain Reference Standards

The RFP specifications were also improperly biased in regards to the evaluation of the respective proposers' experience level. The RFP failed to specify a concrete process for evaluating a proposer's experience in conducting similar projects relative to the other proposers. The RFP failed to include any requirement specifying a specific number of references that a proposer must provide, any requirement that submitted reference projects be substantially similar in scope and capability as the solution sought under the RFP, or any uniform procedure for how the County and/or Selection Committee would evaluate or contact references. In this way, the County created an improper level of subjectivity within the process of evaluating each proposer's relevant prior experience on similar projects. This resulted in a biased and improper evaluation of Harris' past experience.

Specifically, Harris responded to the RFP's general and unlimited request for "references" by providing a substantial list of projects. Without a uniform process for evaluating such references in the RFP, the County only called two of the references provided, seemingly picking these two at random. In fact, the two Harris references contacted by the County had little similarity to the scope and requirements of the RFP compared to other references provided. Furthermore, the County only contacted these two references to evaluate Harris' prior experience on similar projects, when Harris had provided other references that were substantially similar to the kind of solution sought in the RFP. As one example, a major component of the solution sought under the RFP is that such

a solution would be reliable in all forms of weather, including hurricane conditions. However, despite Harris providing a number of references to projects in Florida that experience hurricane conditions, the two references contacted by the County have no experience with such weather and the Harris solutions provided in those projects, therefore, have never been tested in such conditions. This is one small example of the myriad of ways in which the RFP's subjective and uncertain method for evaluating a proposer's references failed to provide proposers with an accurate, unbiased evaluation of past experience. The RFP further exacerbated this unfair result by failing to normalize or take into account the effects of these unreasonable restrictions when evaluating Harris' proposal. The result was an inaccurate and biased evaluation of Harris' past experience on similar projects. Since such experience represented 75% of the total evaluation points scored by the Selection Committee when evaluating proposals, the County is unable to lawfully award an unbiased contract under the RFP.

iv. Refusal to Make Traffic Data Available to All Proposers Prior to Submission of Proposals

The RFP was further biased towards Motorola because the County ensured that only Motorola would have access to information that undoubtedly proved invaluable in the preparation of the responses to the RFP. Specifically, as the incumbent vendor, Motorola had access to certain traffic data that was necessary to determine the proper solution to propose under the RFP. When Harris requested this information from the County prior to the submission of its proposal, the County refused to provide it, improperly putting Harris at a significant disadvantage when preparing its response to the RFP.

Since the Prior System was installed and maintained by Motorola as the incumbent vendor, the RFP had a Motorola-specific configuration describing the capacity requirement for the new radio system (24 channels). Harris asked for the traffic data (also known as use data) on the County's existing system and other supporting information prior to the submission of proposals, to properly analyze the County's capacity needs. This data was critical to the formation of Harris' proposal because the Harris technology is different than the Motorola technology. The Harris implementation of the P25 standard technology is superior by processing calls more efficiently and, therefore, requires less channels and hardware. As such, one of the major competitive advantages for Harris relative to Motorola is that the Harris solution can thus provide equivalent capacity for a customer while reducing the customer's equipment purchase and maintenance costs. Therefore, the purpose of Harris' request for the traffic data during the initial proposal preparation period was necessary to ensure that the Harris proposal would provide sufficient capacity to support the County's users. Harris' request was denied by the County, who reiterated their specific literal requirement for the Motorola-specific configuration. Consequently, Harris was at a significant disadvantage, relative to Motorola, when crafting a response to the RFP.

If Harris would have had the opportunity to review such traffic data prior to the initial submission of its proposal, then its loading estimates would have been calibrated and the proposed channel count would have been adjusted accordingly. In this way, Harris was prevented from

proposing and justifying the most efficient and cost-effective channel count in its initial proposal – while Motorola had no such disadvantage due to its prior possession of such information.

B. The RFP's Post-Submission Evaluation Process was Improperly Biased Against Harris

In addition to the biased manner in which the RFP was crafted, the County may not lawfully award a contract under the RFP to Motorola because the post-submission evaluation process was improperly biased against Harris. Specifically, the County employed an unlawful and biased method for the allowance of post-submission modifications to the respective proposals and the evaluation process was improperly tainted by a threatening letter to the Selection Committee from a non-voting government entity that had significant leverage over the award decision.

1. The Process for Post-Submission Proposal Modifications Improperly Favored Motorola

Entering the oral presentation stage of the selection process, the County had identified critical issues in both the Harris proposal and the Motorola proposal that resulted in the County finding certain portions of both proposals not fully compliant with the RFP specifications/requirements. Then, at the Selection Committee Meeting, the County Attorney informed the proposers that no substantive “changes” would be allowed to the proposals, and that any modifications to the proposals would be confined only to “clarifications” that would enhance the County’s understanding of the respective proposals. The County Attorney re-emphasized this point by declaring that the Selection Committee would not be allowed to consider any substantive post-submission “changes” to the proposals.

At this point, the County’s post-submission modification process became improperly biased against Harris. While the County stressed the lack of full compliance on the part of Harris’ proposal to the Selection Committee, Harris was not allowed to modify its proposal to make it compliant – as such modifications would constitute “changes” under the County Attorney’s instructions. However, Motorola was inexplicably allowed to modify the areas in which the Motorola proposal was originally found to be less than fully compliant. The County stated that these modifications to the Motorola proposal were allowed because such modifications simply constituted mere “clarifications” to Motorola’s original proposal – even though such changes had the significant effect of transitioning Motorola’s proposal from non-compliant to fully compliant in a number of integral areas under the RFP’s requirements. A summary of the primary examples of such post-submission changes to Motorola’s proposal, and the effect that these changes had on Motorola’s proposal, are detailed below:

1. Critical Issues

- a. M1, page 5-7: Motorola changed its response by affirming post-submission that Motorola would agree to coverage testing requirements. This resulted

in a change of Motorola's technical score in this category from "Partially Compliant – Need Clarification" to "Fully Compliant With Confirmation."

- b. M3, pages 9-10: Motorola changed its response to indicate, after submission of proposals, that it would guarantee coverage. This was a significant modification, as coverage is arguably the single most important element of a land mobile radio system requirement.

These two critical issues raised by the County specifically address the very essence of a functional P25 System. For the safety of the first responders that rely on the System, it is essential that the County receive contractual assurances that the provider will guarantee coverage and that the appropriate testing protocol be in place to ensure such coverage. The Motorola bid failed on both counts; however, the County simply accepted their "oral clarification" that such essential components were, in fact, part of their bid.

2. *Non-Critical Issues*

- a. M4, page 11: Motorola changed its proposal by increasing the number of consoles it included in its proposal, and adjusted its proposal price based on the new amount of consoles quoted.
- b. M5, pages 12-13: Motorola changed its proposal by completing its response to the mandatory OTAR response requirement of the RFP. The need for this late completion was that Motorola had originally omitted material information from the OTAR response portion of its proposal. This change resulted in a modification of the technical scoring of this portion of Motorola's proposal from "Partially Compliant" to "Fully Compliant."
- c. M6, page 13: Motorola changed its proposal by correcting certain omissions from its original response to the mandatory OTAP response requirement within the RFP. This change resulted in a modification of the technical scoring of this portion of Motorola's proposal from "Partially Compliant" to "Fully Compliant."

Established procurement case law has long held that a non-conforming proposal cannot be changed to conform to the bid specifications after the deadline for submission of proposals. "If officials charged with the letting of public contracts should be permitted in their discretion to permit bids to be changed after they would have been received and opened, it would open the door to the abuses which it is the purpose of the requirements of competitive bidding to prevent and suppress." See *Harry Pepper & Assocs., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1193 (Fla. 2d DCA 1977) (quoting *Collier v. City of Saint Paul*, 26 N.W.2d 835, 842 (1947)). The County's actions in classifying the modifications to Motorola's proposal as "clarifications" rather than "changes" does not magically make such modifications allowable under Florida procurement law. Rather, the significant effect that these modifications had in transitioning Motorola's proposal

from “non-compliant” to “compliant” belies the obvious conclusion that these modifications are properly classified as improper “changes” under the law.

Alternatively, even if the modifications to Motorola’s proposal were allowable under the applicable procurement law, the County’s disparate treatment of Harris when Harris requested similar authority to make modifications to its proposal demonstrates an improper bias in favor of Motorola. As previously described, the County refused to provide Harris with invaluable traffic data prior to the submission of proposals. This forced Harris to conduct an analysis by benchmarking and comparing the new proposed County system against other large public safety systems, to estimate the traffic load for the new County system. Based on this benchmarking data, the system proposed by Harris (16 channels) would provide the County with sufficient capacity to handle its needs. Then, during the first round of oral presentations by the vendors, the County representatives provided new data to Harris and established a new specific capacity requirement. This new data and requirement wasn’t in the original RFP. Interestingly, the County finally provided the requested traffic data as part of the Technical Evaluation Committee’s evaluation of the original design proposed by Harris. Harris subsequently used this traffic data to respond to the amended RFP requirement and provided a modified 19 channel solution during the second round of oral presentations. The County then made it clear in the second round of oral presentations that all proposers would have to abide by the 24 channel requirement as set out in the amended RFP requirements. Harris responded by attempting to modify its proposal so that it would be compliant with this requirement – as Motorola had done with other requirements as previously described. However, unlike Motorola’s modification requests that were allowed during the first round of oral presentations, the County arbitrarily decided that vendors could not modify their proposals during the second round of oral presentations. Harris was therefore precluded from taking advantage of the same modification process that allowed Motorola to change the status of the Motorola proposal from “non-compliant” to “compliant.”

Accordingly, the County’s arbitrary and biased treatment of requests for post-submission proposal modifications improperly biased the post-submission evaluation process against Harris. The County is therefore unable to lawfully award a contract under the RFP to Motorola.

ii. The City of Delray Beach Improperly Biased the Post-Submission Evaluation Process Against Harris

The unbiased nature of the selection process for the RFP was further improperly tainted by the City of Delray Beach’s actions in sending a threatening letter to the County and Selection Committee, wherein the City of Delray Beach stated that Motorola clearly had the better proposal, that Harris’ proposal was inadequate, and that the City of Delray Beach would not participate in the project connected to the RFP if Harris was the selected awardee. Importantly, this letter was included within the package of materials given to the Selection Committee just prior to the final evaluation of proposals, thus increasing the risk of bias at this critical point in the procurement process.

Specifically, the letter from Delray represented to the Selection Committee that Motorola would "be best suited to satisfactorily complete the P25 project" and that Harris' proposal "obviously did not meet the needs of the RFP." Perhaps most egregiously, Delray's letter concluded with the threat that "if [the County] chose a different vendor other than Motorola, the City of Delray Beach would have to rethink our commitment to the County." When these statements are considered alongside the highly interrelated nature of the County's relationship with Delray in connection with the RFP, the improper bias effect of Delray's letter becomes clear. As described previously, Delray played in integral part in the RFP procurement process. Delray is one of three government entities (classified as "Hub Partners") that exclusively use the County's SmartZone Controller portion of the System sought under the RFP, and pay the County an annual fee for this use of the System. Additionally, as a Hub Partner, Delray executed a separate interlocal agreement with the County, wherein Delray indicated its intent to continue the current functional relationship with the System and allowed for Delray to use the RFP as the procurement mechanism for replacement of Delray's existing radio systems with P25 compliant radio systems. As a result of this connection to the RFP project, the County invited two representatives from Delray to participate in the technical evaluation and Selection Committee processes of the RFP as non-voting members with invitations to attend all of the technical evaluation and Selection Committee meetings. Lastly, the RFP itself emphasized that there would be a "high level of internal coordination that will be required between the County and the . . . Hub Partners" as it related to the RFP. Consequently, although Delray was not officially a voting member within the RFP evaluation process, Delray unofficially had an obvious ability to improperly influence and sway the Selection Committee's decision and ultimate outcome of the RFP evaluation process.

The purpose of competitive bidding under Florida law has long been said to avoid "opportunities for favoritism, whether any favoritism is actually practiced or not." *Wester v. Belote*, 138 So. 721, 724 (Fla. 1931). By virtue of the threatening Delray letter delivered to the Selection Committee, the RFP evaluation process was replete with opportunities for those with the power to make recommendations/decisions regarding the RFP to exercise undue favoritism. Consequently, the County cannot lawfully award the contract arising out of the RFP to Motorola.

Kathleen M. Scarlett
July 23, 2015
Page 15

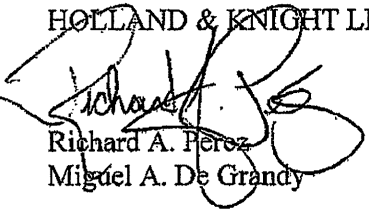
III. CONCLUSION

For all of the foregoing reasons, the County's award to Motorola under the RFP is arbitrary, capricious, and unlawful. Harris respectfully requests that, consistent with Florida law and the County Code, the Director of Purchasing recommend rejection of the Selection Committee's findings as laid out in the Letter of Intent, and instead recommend that the County either (i) negotiate with Harris based on the requirements set forth in the RFP or (ii) reject all bids.

Respectfully submitted this 23rd day of July, 2015.

Sincerely yours,

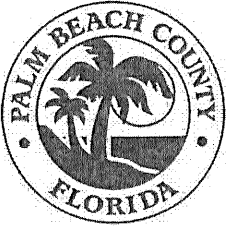
HOLLAND & KNIGHT LLP



Richard A. Perez
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RAP:j d

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August 12, 2015

Via FedEx (305) 374-8500
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Mr. Richard A. Perez, Esquire
Mr. Miguel A. DeGrandy, Esquire
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**RE: Palm Beach County Project No. 14212
Request for Proposal to Deliver and Maintain an Association of Public-Safety
Communications Officials (APCO) Project 25 (P25) Trunked Simulcast
Countywide Public Safety Radio System
Notice of Protest**

Dear Mr. Perez and Mr. DeGrandy:

This is in response to your letter dated July 23, 2015 ("Protest") on behalf of your client, Harris Corporation, RF Communications Division ("Harris"), protesting the recommended award of Palm Beach County Project No. 14212, Request for Proposal to Deliver and Maintain an Association of Public-Safety Communications Officials (ARCO) Project 25 (P25) Trunked Simulcast Countywide Public Safety Radio System ("RFP"), to Motorola Solutions Inc. ("Motorola"). I have reviewed and taken into consideration all pertinent information including, but not limited to, the allegations set forth in your Protest; Sections 2-51 through 2-58 of the Palm Beach County Code ("Purchasing Code"); the RFP; and, the package of information provided to the Selection Committee for evaluation of the Responses to the RFP. For the reasons set forth below, your protest is denied.

It is my determination that the Selection Committee's recommendation of award to Motorola is in the best interest of Palm Beach County ("County"). It is abundantly clear that the RFP provided fair and open competition; and, that the RFP process, inclusive of the technical evaluation and the evaluation conducted by the Selection Committee, was impartial and reasonable. That being said, I strongly disagree with the allegations contained in your Protest and have determined, from looking at *actual* documentation, that:

- (1) The RFP was clearly drafted to create and foster open and fair competition;
- (2) Harris, having received *all* information essential for the preparation of a compliant proposal, unquestionably failed to submit a proposal that met the County's plainly stated needs; and
- (3) The technical evaluation process and the Selection Committee scoring process were fair, reasonable, and unbiased; and, that neither the City of Delray Beach nor any other entity had any undue influence in either the technical evaluation process nor the scoring process performed by the Selection Committee.

The following information serves to correct the mischaracterization of "facts" set forth in your Protest, and establishes a framework which enables me to best respond to the

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allegations contained therein. Due to their volume, all Exhibits can be found at the website on the signature page of this letter. Please note that the Login and Password have also been provided for easy access to said Exhibits.

In 1998, the Board of County Commissioners of Palm Beach County ("Board") determined that it was necessary to have interoperability of a Countywide Public Safety 800 MHz Radio System to ensure the public safety of the citizens of this County. At that time, the County's Fire Rescue Department, a number of cities within the County ("Cities"), the Palm Beach County Sheriff's Office ("PBSO"), various non-County governmental agencies, and certain non-governmental organizations (i.e., Red Cross) had separate conventional radio systems, many of which were Motorola radio systems. In large part due to requests from the Cities and to facilitate interoperability with the existing City owned systems, the Board approved a sole source purchase with Motorola for the current System ("Current System"). The Current System became operational in 2000, and the County entered into a sole source contract with Motorola for maintenance of the Current System ("Service Agreement").

In 2004, Motorola published notice that, for the Current System, the only expansion options available to the County included the addition of consoles through December 2007 or IntelliRepeater sites until December 2009. In 2005, Motorola published a "Notification of Support Cancellation", which highlighted the "Cancellation and End of Support Dates" for certain elements of the Current System, particularly the Master Site Equipment ("MSE") and Remote Site controllers, which were anticipated to occur in 2012. In December 2010, Motorola published the "Notification of Support Cancellation" that highlighted the "Cancellation and End of Support Dates" for the other infrastructure items, such as channel voting equipment, specifying that the published cancel year would be 2011 and the end of support would be 2018.

All during this time period, the County implemented continuous planning efforts by:

1. Contractually providing for extended "end of life" ("EOL") guarantees in the initial purchase contract and utilizing the advantage of the County's large supply of spare parts;
2. Establishing a renewal replacement fund in 2000 that ensured potential system replacement within the time frame established for EOL issues, along with the County's need for increased functionality;
3. Interviewing the major County users and governmental partners of the Current System and reviewing their plans in an effort to analyze and prepare for their dispatch and subscriber unit renewal/replacement strategies and/or system replacement in the case of the Hub cities (Boca Raton, Boynton Beach and Delray Beach);
4. Routinely discussing the quality of maintenance of service response and the desired functionality with all major County users and governmental partners, and;
5. Developing a plan for the immediate replacement of the MSE renewal/replacement which:
 - a. placed the MSE under Motorola support;
 - b. maintained interoperability with all partners;
 - c. allowed each governmental entity to proceed with upgrades/replacements as quickly as it could or as slowly as it chose;
 - d. was sensitive to the budget issues of the major County users and governmental partners; and

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- e. maintained/increased the competitive environment for later Current System replacement;
6. Since 2009, adjusting County staff recommendation to implement the coordinated plan, based upon the direction of the Board in annual budget hearings, to extend the life cycles of all infrastructures to the extent practical regardless of the availability of funding.

The County's ability to successfully develop and implement Numbers 5 and 6 above clearly demonstrate the high level of planning and forethought conducted prior to the sole source procurement of the MSE from Motorola. In 2012, since Motorola would no longer guarantee that it would have parts available for servicing the MSE, the County amended the Service Agreement to include "commercially reasonable efforts" language, thereby providing that Motorola would use its best effort to obtain parts and service the MSE.

On August 21, 2012, the Board approved a sole source procurement with Motorola for the replacement of the MSE, and authorized County staff to negotiate a contract with Motorola for same (EXHIBIT 1). Since the balance of the Current System would reach its "end of life" within the following eight (8) years and the Current System would need to be upgraded to P25 standards, there was no doubt that Motorola's replacement of the MSE was the most cost effective and least disruptive alternative. At the Board meeting, County staff clearly stated that a review of a full Current System replacement would be conducted prior to recommending any further capital expenditures for same, and that a competitive process would be utilized if a full Current System replacement was necessary.

On November 16, 2012 the Office of Inspector General ("OIG") issued Contract Oversight Notification 2013-N-001 ("CON") relating to the August 21, 2012 approval of the sole source purchase with Motorola (EXHIBIT 2). Based upon a memo dated November 15, 2012, from Audrey Wolf, Director of Facilities Development & Operations ("FD&O") to Joe Doucette, Chief of Operations for the OIG, it was confirmed that the CON was *"not meant in any way to stop or delay the Motorola MSE"*, and *"that the OIG's recommendation is intended to apply to future County actions."* (Emphasis added) (EXHIBIT 2). It is noted that County staff did not agree with the findings and conclusions of the CON and in fact, had informed the Board prior to the OIG issuing the CON, that a competitive process would be utilized for a full Current System replacement. On November 20, 2012, the Board approved the sole source agreement with Motorola for replacement of the MSE (EXHIBIT 3).

Based upon PBSO's request for encryption (which could only be delivered via a P25 system) and West Palm Beach's approval of a contract with Harris for a P25 system, on April 15, 2014, the Board approved moving forward with the capital renewal/replacement project to migrate from the existing countywide public safety trunked radio system to a full digital system compliant with P25 standards ("Project") (EXHIBIT 4). On October 7, 2014, the Board approved a contract with RCC Consultants, Inc. ("Consultant") for planning and engineering services associated with the Project (EXHIBIT 5). The contract specifically required the Consultant to provide a recommendation for either a phased or full migration of the Project and to draft a vendor-neutral RFP for the design and implementation of the project.

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On February 3, 2015, the Board approved the P25 Migration Path Recommendation Report for the MSE Replacement/Renewal Project ("Report"), which recommended a full system replacement of the countywide public safety trunked radio system. The Report was produced by the Consultant in collaboration with County FD&O Staff (EXHIBIT 6). The Report preparation effort included participation by vendors, including Harris, and concluded with a Vendor Comment Log of each vendor's comments, a response to each comment, and the end result relative to the Report. The Report identified procurement options, critical issues in choosing a migration approach, and a recommendation on the timing of the migration.

Knowing that a Request for Proposal ("RFP") would be forthcoming, County staff began conducting a "Vendor Familiarity Effort" to provide all interested vendors with information and access to the County's existing public safety radio system and its users prior to the issuance of an RFP. As part of this effort, County Staff: Distributed a Current System Assessment Report (EXHIBIT 7), User Needs Assessment Report, and photos of County tower sites and dispatch centers; held a Pre-Solicitation Meet and Greet on February 12, 2015, which gave vendors the opportunity to share general information regarding their P25 systems; enabled vendors to demonstrate their system/dispatch console equipment; and encouraged vendors to interact with County and municipal users of the public safety radio system. During the week of February 23, 2015, the County escorted vendors to each of the tower sites and dispatch center locations in order to provide vendors with an opportunity to survey the conditions and the work required for the new public safety radio system. Harris was given the exact information and opportunities as all interested vendors.

On April 7, 2015, the Board approved the RFP, which is the subject of this Protest. Prior to approving the RFP, the Board was advised that a draft RFP had been distributed to all interested vendors, including Harris, along with the Cities, for their review and input as to provisions within the RFP that were not consistent with industry standards; that were not reasonably practical; or, that limited the competitive nature of the RFP. The Board was also advised that County staff held a "vendor/municipal review meeting" to discuss comments to the draft RFP that had been received and reviewed by the consultant and by County staff. A log of the comments, which included the status of the comments designating each as either incorporated, partially incorporated or not incorporated, was provided to the Board, along with the final RFP, for consideration. It is noted that Harris provided a number of comments and, as you can see, the County changed language as a result of such input and truly attempted to resolve the remainder (EXHIBIT 8).

As such, in response to your Protest:

A. The RFP's specifications were not biased in favor of Motorola..

The RFP, as approved by the Board, was drafted to create and foster competition in a number of ways, and does not provide an "improper and deliberate bias in favor of Motorola" as alleged. Your protest fails to include any specific evidence or citation to the RFP that supports your allegations of bias. All you have provided are mischaracterized "facts" upon which you've based erroneous allegations. For example, the County currently has a twenty-eight (28) channel public safety radio system. The County is aware that, although Motorola is capable of providing a twenty-

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eight (28) channel simulcast system, at least two (2) vendors, including Harris, are able to provide a maximum of twenty-four (24) channels in their simulcast systems. In order to increase competition, the County decided to *change* the design of the Project to a twenty-four (24) channel dynamic dual mode system where ten (10) channels could support Phase II operation. This maximized the number of Phase I talkpaths while providing the *same* capacity to PBO and the County's Fire Rescue Department that they have at the present time via the Current System.

Further, it is noted that the County went through considerable effort to ensure a fair and level playing field by restricting Motorola from proposing a system design that, as the incumbent Contractor, would give them a competitive advantage over other proposers. Features and functions proprietary to Motorola or standard features and functions that other proposers, such as Harris, did not support were either removed from the RFP or listed as "options". These changes to the specifications within the RFP resulted from responses received, from Harris and others, to the draft RFP. Specifically, in Section 1.2 of Exhibit "B" to the RFP entitled "Design Constraints", Motorola was refrained from reusing the existing network core in their design of the Project. Motorola, like all proposers, was required to provide two (2) network cores and cutover using Inter RF Subsystem Interface ("ISSI"). Also in this Section, all proposers had to provide the same number of dispatch consoles. Thus, although Motorola has provided the County with P25 compatible dispatch consoles that are currently being used, Motorola, like Harris and other interest vendors, is required to propose all *new* dispatch consoles. With regard to the required P25 features and functionality included in the draft RFP, the County addressed Harris' comments and either removed the features and functionality that Harris did not support or designated them as "options". Therefore, I certainly do not agree that the specifications within the RFP favored Motorola, or were biased toward Motorola, in any way. In fact, the opposite could be argued.

To ensure you have a full picture of the effort the County undertook to provide a fair and level playing field, the County made the following design and/or specification changes to the draft RFP:

1. **24-Channel System with 10-channels Dynamic Dual Mode Phase II** – Though the Current System is twenty-eight (28) channels and twenty-eight (28) channels would meet the needs of the County, the County elected to require a twenty-four (24) channel solution to increase the number of vendors, including Harris, which could submit a proposal.
 2. **Redundant Network Cores and Use of Inter RF Subsystem Interface (ISSI) During Cutover** – Without the design constraints listed in Section 1.2 of the RFP, Motorola could have proposed to reuse the current system's network core and fully integrate the Current System into their proposed new system using Motorola's proprietary SmartX technology to facilitate cutover; whereas other vendors could not. This would have provided Motorola a price and project approach advantage.
 3. **Dispatch Consoles** – Without the design constraints listed in Section 1.2 of the RFP, Motorola could have proposed to reuse the existing MCC7500 consoles whereas other vendors could not. This would have provided Motorola a price and project approach advantage.
-

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4. **P25 Features and Functionality Removed or Changed to Optional** – Based upon Harris' feedback of the draft RFP, the County made the following changes:
- a. 700/800 MHz Capable Fixed Network Equipment – Change to specifications made to indicate the specific type of equipment that is required to support dual 700/800 MHz operation. **(EXHIBIT 9 - Final RFP, Section 4.5).**
 - b. Centralized Fault Management – Change to specifications made to indicate that redundant and resilient IP-based connections meet the intent of the Section. **(EXHIBIT 9- Final RFP, Section 7.5.11).**
 - c. Keypad – Requirement was removed from the RFP. **(EXHIBIT 10 - Draft RFP, Section 7.5.17.10)**
 - d. Paging Encoder – Requirement for on-screen keypad removed from the RFP. **(EXHIBIT 9- Final RFP, Section 7.5.17.32).**
 - e. Onscreen Help- Requirement removed from the RFP. **(EXHIBIT 10 - Draft RFP, Section 7.5.17.44).**
 - f. Busy Tone – Requirement changed to optional **(EXHIBIT 9 - Final RFP, Section 7.5.17.45).**
 - g. Common System Features and Services **(EXHIBIT 9- Final RFP, Section 7.6.6)**
 - 1) Radio Check- Changed to optional.
 - 2) Radio Unit Monitoring -Changed to optional.
 - 3) Status Updates- Requirement removed from the RFP.
 - h. PBSO had requested a number of ISSI features **(EXHIBIT 9 - Final RFP, Section 4.10)** be made mandatory; however, based upon feedback specifically from Harris, the following items remained optional:
 - 1) Selective Alert
 - 2) P25 Data
 - 3) Over-the-Air Rekeying.

Now that I have provided you with the steps that the County undertook in drafting the RFP and specifications in order to create a level playing field, I will address your specific protest allegations:

I. Aviat microwave technology

Your numerous allegations claiming that Aviat microwave technology "was an unnecessary requirement that unfairly granted Motorola a significant advantage over Harris" is erroneous. The

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County currently utilizes two (2) microwave systems that support the Current System: (1) an older Harris Constellation system that is no longer supported by the manufacturer; and, (2) an Aviat Networks IRU-600 system. The requirement for an Aviat Networks IRU600 microwave system as a replacement for the Harris Constellation system, as part of the RFP, allows for the complete integration of the two (2) microwave systems into one (1) system, which will provide additional capacity and flexibility during cutover and increased reliability through additional redundancy. Because the two (2) systems have a number of microwave sites in common, the nodal architecture of the Aviat Networks IRU600 platform allows for the expansion of the existing IRU-600s rather than requiring a completely new installation. This integration also allows the County to maintain a single network management system to monitor the two (2) microwave systems.

On May 1, 2015, Harris submitted a question during the RFP process asking "what steps is the County taking to ensure that equal and fair pricing is provided to all potential bidders from this sole source provider?" No supporting evidence whatsoever was presented to demonstrate that Motorola would, in fact, receive more favorable pricing from Aviat Networks than Harris. In Addendum #5 to the RFP (EXHIBIT 11), the County responded to Harris' question and clarified the RFP's Aviat microwave technology specifications to include that "the scope of work requested of Aviat by the vendors can be different (e.g., equipment only, equipment and integration, equipment, integration and installation, etc.) and therefore pricing to each vendor may be different." In addition, while the County is certainly within its rights to determine which technology is best for its system, it is not the County's responsibility to dictate the terms of a proposer's purchase of required technology.

In addition, a review of the financial proposals submitted by Motorola and Harris exposes a major flaw in your argument related to the pricing of the Aviat requirement. Harris proposed the sum of \$2,425,307 for a Microwave Network Backhaul and a \$1,000,000 option for an Aviat microwave system, equaling a total proposed amount of \$3,425,307. Motorola proposed a total amount of \$3,216,367 for an Aviat microwave backhaul. The difference between the financial proposals is \$208,940 or just 1.1% of Harris' infrastructure bid. This does not appear to support the argument that Motorola's alleged pre-existing arrangement with Aviat provided Motorola with a competitive advantage.

Finally, at the Selection Committee Meeting, Harris publicly stated that they had discussed the \$1,000,000 option for the Aviat microwave system with Aviat Networks, and that Aviat Networks determined that the option was not required. Harris then offered to substantially reduce their financial proposal to a lower price than what was proposed by Motorola. Again, this does not appear to support the argument that Motorola's alleged pre-existing arrangement with Aviat provided Motorola with a competitive advantage.

For all of these reasons, I reject your argument that the requirement for the Aviat microwave technology was unfairly biased in favor of Motorola.

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II. Lack of Concrete Evaluation Criteria

Your allegation that "The RFP failed to provide sufficient concrete specifications, such that prospective proposers were not properly put on notice as to how the County would ultimately select an awardee under the RFP" makes no sense. I am very well versed not only in government procurement, in general, but also in procurement law; and it is my opinion that the Evaluation Criteria set forth in the RFP was clear, and that the proposers had proper notice in order to fully understand how the County would ultimately select a recommended award for presentation to the Board. As you are very aware, Section III of the RFP specifically details the Selection Process by fully explaining the Review of Proposals for Responsiveness; Selection Procedure, which includes a technical review of the proposals by a Technical Evaluation Committee and a review performed by the Selection Committee for the RFP; the Evaluation Criteria, and the factors comprising each particular criteria; and the Award of the Contract. Points, on a scale of one-hundred (100), were established for each of the Evaluation Criteria according to the importance of same to the County. In addition, the RFP included detailed factors that clearly described each Evaluation Criteria. Certainly, if Harris had any questions pertaining to the Selection Process or the Evaluation Criteria, Harris would have asked County Staff. Harris certainly had ample time and opportunity to ask questions and, as we both know, they asked many questions of and provided much input prior to and during the RFP process.

The Selection Committee was not biased against Harris in the review of Harris' proposal. Essentially, the RFP required a twenty-four (24) channel public safety radio system and Harris proposed a sixteen (16) channel system. Why Harris would propose a sixteen (16) channel system, when the County amended its draft RFP from a twenty-eight (28) channel public safety radio system to a twenty-four (24) channel system in order to provide Harris and others an opportunity to propose, totally perplexes me. Also, the RFP requirement for the twenty-four (24) channel public safety radio system included the maximizing of the number of Phase I talkpaths. Quite frankly, the sixteen (16) channel system does not provide the maximum number of Phase I talkpaths that all vendors can provide, whereas an RFP compliant twenty-four (24) channel system does. In addition, Harris proposed to perform annual preventative maintenance versus the required bi-annual preventative maintenance; and, indicated they would not perform the monthly site visits that were required.

The allegations within your Protest regarding the "improper level of discretion" given to the Selection Committee totally confound me. By its very nature, an RFP may be considered as being somewhat subjective, especially when compared to an Invitation for Bid, which is based solely upon price. Basically, RFPs are utilized when a scope of work cannot be completely defined or when a result or service may be achieved in more than one (1) way. Persons sitting on Selection Committees are not robots that are planned to think alike. They are people who bring their expertise to the table in order to best evaluate a good or service based upon their knowledge. The Selection Committee Members for the Project's RFP included the County Administrator, the County Fire Chief, and a representative of the Sheriff for the County. These Selection Committee Members, no doubt, not only evaluated the proposals based upon the evaluation criteria set forth in the RFP, but also upon the needs of those they represent. The Selection Committee's discretion and authority is

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limited by the RFP and by federal, state and local law; and, I could find no support for your allegations that the Selection Committee Members utilized unbridled discretion or that they exceeded their authority.

As stated and established above, Harris proposed and provided a Price Proposal for a sixteen (16) channel public radio system in lieu of the required twenty-four (24) channel system. I do not find any inconsistency in the scoring of the Selection Committee Members where one (1) Selection Committee Member rated Harris with a "0" for their Price Proposal and two (2) Selection Committee Members rated Harris with a "0" for Technical Solution, Performance and Experience in System Delivery/Installation. It is quite logical to infer that these scores were based upon Harris providing a non-compliant sixteen (16) channel public safety radio system. It is noteworthy that the Grand Total scores of each evaluator for Harris were very similar, and the Grand Total scores of each evaluator for Motorola were very similar. Your allegations that the Selection Committee acted improperly because they made an award recommendation to Motorola based upon their proposal "that was substantially similar to" Harris' proposal "in terms of technical ability, but much more expensive" is flawed. The Selection Committee considered Harris' proposal lacking in a number of areas and scored it accordingly.

III. Reference Standards

You allege that the RFP included *"standards for references"* that were *"unreasonable and subjective"* and that *"Motorola's references were granted artificially greater weight and references for other vendors were weakened"*. You further argue that the RFP: *"failed to specify a concrete process for evaluating a proposer's experience in conducting similar projects relative to the other proposers"* and *"failed to include a specific number of references that a proposer must provide"*. All of this resulted, in your opinion, in an *"inaccurate and biased evaluation of Harris' past experience on similar projects"*. It is my opinion that these allegations are clearly unfounded.

With regard to the Performance and Experience in System Delivery/Installation, at the "vendor/municipal review meeting" mentioned above, which was held *prior* to the Board's approval of the RFP, Harris voiced a concern that, in essence, the RFP requirement of a list of all projects suggested that the evaluation would be based upon the quantity of projects, thus resulting in an unfair competitive advantage to Motorola. Upon considering Harris' comment, County staff revised Tab 5 by adding the following: *"The intent of this requirement is to review the quality of the Respondent's experience. More than just success stories, the County is interested in understanding how the Respondent handled issues that arose during past projects as this would be an indicator of how the Respondent would perform for the County in the event issues developed on this project."* The RFP approved by the Board included this additional language and thereby provided Harris with assurance that the County was looking for and only interested in the quality of references, and not the quantity of references.

More specifically, in response to Tab 5, Harris provided a total of eighteen (18) references and Motorola provided one-hundred and two (102) references. With the large number of references received, County staff determined to verify a ten percent (10%) sample of reported system

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implementation references. It was determined that such a random sample was the fairest method to reduce the large number of references into a manageable number for reference checks. As indicated in the "Radio System Implementation Vendor Reference Verification Summary", which was provided to Harris on July 6, 2015 prior to the Selection Committee meeting, the County created a pool of references from which to select the ten percent (10%) sample by considering: Specifications of the referenced systems; infrastructure details; and, user features. As such, two (2) references for Harris and eight (8) references for Motorola were verified. All references were returned as favorable. There were no issues for discussion during the technical evaluation process or by the Selection Committee as to the references required in Tab 5 or Tab 8.2. It is my opinion that the process utilized in determining which references that County staff would verify was fair, unbiased, and not in violation of the reference process identified in the RFP.

I could find no documentation, action, or process that would support *any* of your allegations with regard to references.

IV. Traffic Data.

The allegations stating that the County provided Motorola with exclusive access to traffic data that was integral to the formation of a proposal, and that the County refused to provide this traffic data information to Harris, is without merit. On Page 6 of Addendum No. 4 to the RFP, the County addresses Harris' question with regard to traffic data. (EXHIBIT 12) The County clearly states that *"The RFP requires that the simulcast trunked system be a **24 channel system** with a minimum of 10 channels configured for "dynamic dual-mode" Phase I and Phase II and the Contractor is not required to analyze system capacity."* (Emphasis Added.) This Addendum further states that *"Based upon data from 9/12/2013 to 9/12/2014, the County's peak busy hour traffic loading was 11.04 Erlangs and non-peak busy hour traffic loading was 3.90 Erlangs. Over the same time period, the average call length is 9.88 seconds and the total number of calls is 17,864,141."*

As Harris knows or should have known, traffic data is irrelevant for a twenty-four (24) channel system. The only reason to perform a traffic analysis in order to prepare a response to this or any RFP would be to determine the number of channels to propose. In addition to being stated in Section 4.7.1 of the RFP, Addendum No. 4 in response to Harris' request for traffic data clearly states that the Project shall be a twenty-four (24) channel system. In spite of any traffic data that Motorola may be privy to as the incumbent to the current contract, said traffic data is meaningless since it is not required and does not pertain to this RFP. Regardless, in Addendum No. 4, the County did provide the very data you accuse the County of refusing to provide. Furthermore, it is noted that subsequent to the issuance of Addendum No. 4, Harris no longer asked for additional traffic data. As such, I see no reason to address your often-repeated allegations.

B. The RFP's post-submission evaluation process was not biased against Harris.

I. Post-submittal proposal modifications.

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As to your allegation that the process for post-submission modifications improperly benefitted Motorola, it is noted that the Technical Evaluation Committee's opinion on compliance was changed on nine (9) Motorola items and seven (7) Harris items after their respective oral presentation before the Technical Evaluation Committee. One (1) of the items changed for Harris by the Technical Evaluation Committee was Item H2, regarding the Maintenance Plan, in which Harris was initially found to be "Partially Compliant- Need Clarification". Tab 8 of the RFP "Performance and Experience in Maintenance Service" requires proposers "describe in detail how the Respondent will provide warranty, maintenance and service for the system and its components" and to "provide the name of any/all subcontractors (if any), the qualifications of its service personnel, the physical locations for depot service for infrastructure components, any existing local service assets, and any planned future service assets in response to this RFP." In looking at Harris' proposal, it was unclear as to who would be responsible for maintaining the system; and, County Staff sought clarification because no determination could be made as to whether Harris, or a subcontractor chosen by Harris, would provide the required maintenance. Harris brought a representative from Communications International ("CI") to the oral presentation conducted by the Technical Evaluation Committee. Although Harris failed to include CI anywhere in their proposal as required, Harris informed the Technical Evaluation Committee that CI would perform maintenance of the system; and, the CI representative orally described their qualifications. Although I may disagree with the Technical Evaluation Committee's change of Harris' status to "Partially Compliant Only For Not Providing Requested Documentation" with regard to their Maintenance Plan, this is one of many examples where it is proven that Harris was permitted to provide clarification in relation to their proposal. Additional examples where the Technical Evaluation Committee changed Harris' status include:

- a) In Item H5, regarding Spares and Test Equipment, Harris' status was changed from "Partially Compliant- Need Clarification" to "Fully Compliant".
- b) In Item H11, relating to Radio Coverage Acceptance Testing, Harris' status was changed from "Partially Compliant- Need Clarification" to "Fully Compliant".
- c) In Item H 13, relating to interoperability Training, Harris' status was changed from "Partially Compliant" to "Fully Compliant".
- d) In Item H21, relating to Over-the-Air Re-Keying (OTAR), Harris status was changed from "Partially Compliant- Need Clarification" to "Fully Compliant".
- e) In Item H24, relating to wireless dispatch consoles, Harris status was changed from "No Position- Need Clarification" to "Fully Compliant".
- f) In Item H25, relating to emergency restoration services, Harris status was changed from "No Position- Need Clarification" to "Fully Compliant".

Again, both proposers were treated fairly and equally, and I found no fault or bias in the evaluation process conducted by the Technical Evaluation Committee.

There is a plethora of case law with regard to acceptable modifications or clarifications that can lawfully be made to a proposal post-submission. The basic premise is that provisions within a proposal cannot be materially changed after the proposal submittal date. It is well known that clarifications or minor modifications can, in fact, be made to a submitted proposal. What you did not mention in your protest letter is that Harris, having realized the error of proposing a non-compliant

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sixteen (16) channel public safety radio system, attempted to change the number of channels in their proposed system, along with the financial proposal associated with such system, during their oral presentation at the Selection Committee meeting! It is clear that such a change to Harris' proposal is material in nature and is a clear violation of Florida procurement law. Mr. Jones is extremely knowledgeable of procurement law, and it is my opinion that he correctly advised the Selection Committee with regard to the prohibition of substantive, material changes to the proposals submitted by Harris and Motorola. I have carefully reviewed the critical and non-critical issues set forth in your Protest, and I firmly believe that the determinations to allow minor clarifications, but to prohibit material changes to the proposals, was fair and consistent with general procurement law and practices.

II. City of Delray Letter.

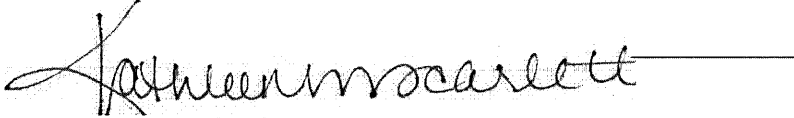
Lastly, your allegation that the letter sent by Captain Thomas Mitchell, Delray Beach Police Department, to Richard Avery, Project Manager at the County FD&O, was threatening and that it improperly tainted the RFP evaluation process is completely untrue. The City of Delray Beach is one (1) of three (3) Hub-Cities, which has a public safety radio system that is connected to our Current System. Interoperability is achieved by connecting the Hub-Cities to our Current System. Since the County was procuring a new public safety radio system via the RFP, the City of Delray Beach's system was added to the County's RFP as an alternate opportunity for interested proposers. The County currently has an Interlocal Agreement with the City of Delray Beach that specifically sets forth their *minimal* role in the RFP process as to what they can and cannot do. The City of Delray Beach is allowed to convey their opinions and needs to the Selection Committee; however, they have absolutely no vote or "say" in the RFP selection or evaluation process. It should be pointed out that Captain Mitchell's letter was in response to the sixteen (16) channel public safety system proposed by Harris, which was clearly and obviously non-compliant with the system specifications identified within the RFP. The Selection Committee's focus was clearly on the RFP, the proposers, and the evaluation criteria as set forth in the RFP. I have no factual basis for making any assumption as to what, if any, impact the letter from the Delray Police Department may have had on the Selection Committee Members.

Based on the foregoing, it is my determination that the recommended award proceed as posted. This determination will be final as to the County unless you request a hearing before a Special Master pursuant to Section 2-55 of the Purchasing Code (extract attached). This request must be made in writing and received in my office no later than 4:00p.m., August 19, 2015. Your written request to convene the hearing must be accompanied by a protest bond in the amount of \$1,500.00 remitted by money order, certified, cashier's or bank check payable to Palm Beach County. You are advised to familiarize yourself with the Palm Beach County Code, which provides that your protest bond shall be forfeited if your protest is not upheld by the Special Master. Please note that the hearing before the Special Master is limited to those issues related to this determination

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and the issues raised in your protest letter referenced hereinabove. Lastly, it is your obligation to ensure that a verbatim record of the hearing is made, in case you decide to appeal the decision of the Special Master to the Circuit Court.

Sincerely,

A handwritten signature in black ink, reading "Kathleen M. Scarlett", followed by a horizontal line.

Kathleen M. Scarlett, Esquire
Director, Purchasing Department

Attachment: Section 2-55, Palm Beach County Purchasing Code

Exhibits: <ftp://ftp.co.palm-beach.fl.us/>
Login: cidpublic
Password: cidpublic123

cc: Mike Jones, Assistant County Attorney
Samara Cooper, Assistant Director, Purchasing
Audrey Wolf, Director, FDO
John Cheshier, Director of Capital Improvements, FDO
Richard Avery, Project Manager, FDO

ment Project, and the corresponding change order required to implement those purchases, may be approved by the Director of Purchasing or by the Director of the appropriate Construction Department in accordance with the County's sales tax recovery program.

(g) *Informal competitive solicitation process.* Solicitations for goods or services valued at less than the Mandatory Bid or Proposal Amount shall be made in accordance with policies and procedures established by the Purchasing Department for Requests for Quotes and Requests for Submittals.

(h) *Waiver of requirements for competitive selection for professional and consultant services.* The Board may waive the requirements for competitive selection and approve professional or consulting services upon recommendation of the Administrator.
(Ord. No. 2015-004, § 5, 1-13-15)

Sec. 2-55. Protested awards.

(a) *Right to protest.* After posting of the recommended awardee, any bidder or proposer who is aggrieved in connection with the recommended award may protest in writing to the Director of Purchasing. The right to protest is limited to those procurements of goods or services solicited through an Invitation for Bid or a Request for Proposal. Recommended awards less than the Mandatory Bid or Proposal Amount cannot be protested. Notwithstanding the above, the Director of Purchasing may, in his or her sole discretion, include the right to protest in any solicitation process if in the best interests of the County.

(b) *Notice of protest.* The protest shall be submitted within five (5) business days after posting of the award recommendation. The protest shall be in writing and shall identify the protestor and the solicitation, and shall include a factual summary of the basis of the protest. Such protest is considered filed when it is received and date/time stamped by the Department of Purchasing. Neither the Director of Purchasing nor a special master shall consider any issue not submitted in writing within the time frame specified for the notice of protest.

(c) *Authority to resolve.* Protests filed in accordance with Section 2-55(b) hereinabove shall be resolved under the provisions of this Section.

(1) The Director of Purchasing shall have the authority to:

- a. Uphold the Protest. The protest may be upheld based upon a violation of the provisions of this Purchasing Code or of any other County Ordinance, **resolution, policy, or procedure**, or upon discovery of an irregularity or procedural flaw that is so severe as to render the process invalid. If the upholding of the protest will result in a change of the recommended **awardee, a new recommended award** shall be posted in accordance with Section 2-54(c)(8) and 2-54(d)(7) hereinabove. If the upholding of the protest will result in a cancellation of the protested solicitation, a recommendation to uphold the protest and cancel the solicitation will be made to the Administrator, who may then direct the cancellation of the solicitation.
- b. Deny the Protest. If the protest is denied, the protestor has the right to request that the protest be referred to a special master in accordance with Section 2-55(c)(4) hereinbelow.
- c. Refer the protest directly to a special master with no determination made by the Director of Purchasing, in accordance with Section 2-55(c)(4) hereinbelow.

(2) When a protest is filed by a certified SEE contractor or where the protest involves a small business issue, the Director of the Office of Small Business Assistance will act in conjunction with, and with authority equal to, the Director of Purchasing in arriving at the determination to be made in this step of the process. After reviewing the facts surrounding the issues raised in the written protest, the Director of Pur-

chasing, and the Director of the Office of Small Business Assistance may make the determination to:

- a. Uphold the protest in accordance with Section 2-55(c)(1) b. hereinabove.
- b. Deny the protest in accordance with Section 2-55(c)(1) b. hereinabove.
- c. Refer the protest to a special master in accordance with Section 2-55(c)(4) hereinbelow, in those instances when **a determination is not unanimous** between the Director of Purchasing and the Director of the Office of Small Business Assistance. In this specific instance, the protestor will be exempt from posting a protest bond.

In the event that the County adopts an MIWBE Ordinance, any protest process shall be set forth by adopted Board policy.

- (3) The Director of Purchasing shall issue a written statement of the determination within a reasonable period of time. The written statement shall provide the general rationale for said determination and shall be provided to the protestor and to any other party to the protest.
- (4) Upon receipt of a denial of the protest, the protestor may request a hearing before a special master. The request for a hearing shall be in writing to the Director of Purchasing and shall be made within five (5) business days of issuance of the Director of Purchasing's determination. The request for a hearing shall be accompanied by a protest bond of fifteen hundred dollars (\$1,500.00) which shall be remitted in the form of a money order, a certified check, a cashier's check, or a bank check payable to Palm Beach County.
- (5) At no time shall a protestor, party, or any other person, contact a special master regarding any issue pertaining to or involving the protest. Contact between the County and the special master shall be limited to scheduling and other adminis-

trative issues, including the provision and copying of public records pertinent to the protest.

(d) *Establishment of rules.* The Purchasing Department shall establish rules and regulations by separate policy and procedure detailing the selection of special masters, the protest process, and the conduct governing protest hearings.

(e) *Authority of special masters.* Special masters shall have the jurisdiction and authority to hear and decide protests.

- (1) The special master shall make a recommendation as to whether the protest should be upheld or denied.
- (2) If the special master upholds the protest, the special master shall either make a recommendation to cancel the solicitation, or to cancel the award recommendation and post a new award recommendation after re-evaluation based on the special master's determination of the facts in the case. In these instances, the Purchasing Department shall return the protestor's bond to the protestor.
- (3) If the special master denies the protest, the special master shall recommend that the Director of Purchasing proceed with the posted award recommendation. In these instances, the protestor's bond shall be forfeited.
- (4) In making contract awards for procurements in an amount equal to or greater than two hundred thousand dollars (\$200,000.00) per annum, the Board, upon recommendation of the Director of Purchasing, may accept or reject the recommendation of the special master.
- (5) In making contract awards for procurements of less than two hundred thousand dollars (\$200,000.00) per annum, the Director of Purchasing may accept the special master's recommendation or, if the Director of Purchasing determines the special master's recommendation is not in the County's best interest, the original award recommendation may be referred

to the Board for approval. At that time, the Board may accept or reject the recommendation of the special master.

- (6) Nothing contained herein shall limit or divest the Board of its authority pursuant to F.S. Ch. 125, Pt. IV, as referenced in Section 2-51 of the Purchasing Code.

(D) *Stay of procurement during protests.* Notwithstanding anything contained herein to the contrary, in the event of a timely protest, the Director of Purchasing shall stay the award of the contract unless the Director of Purchasing, with the advice of the County Attorney and after consultation with the County Department, makes a determination that the award of the contract without delay is necessary to protect substantial interests of the County.

(Ord. No. 2015-004, § 6, 1-13-15)

§ 2-56. Suspension and debarment.

(a) *Authority.* The Director of Purchasing may suspend or debar for cause the right of a vendor, contractor or subcontractor to be included in the renewal of an existing contract or any solicitation process; and any bid, proposal, submittal, or quote received from that vendor, contractor or subcontractor shall be rejected. The Board shall have the power to waive or lift such suspension or debarment.

(b) *Suspension and debarment.* A vendor, contractor or subcontractor may be suspended for a period not to exceed two (2) years as determined by the Director of Purchasing, or may be permanently debarred. However, any suspension imposed pursuant to the provisions of subsections (b)(3) and (4) below shall be in effect during the pendency of the applicable proceeding, regardless of duration. A suspended or debarred vendor or contractor shall not bid or propose as a subcontractor during their suspension or debarment; and, a suspended or debarred subcontractor shall not bid or propose as a vendor or contractor during their suspension or debarment. A suspension or debarment may be based upon the following:

- (1) Failure to fully comply with the conditions, specifications or terms of a contract with the County, including but not limited

to the unilateral withdrawal of a bid, quote, submittal, or proposal that has been received from the recommended awardee.

- (2) Any misrepresentation in connection with a solicitation or any misrepresentation of fact upon which the County has based a decision, including but not limited to a misrepresentation by a vendor, contractor or subcontractor on a small business application, or a local preference affidavit.
- (3) Charged or convicted with the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract. If charges are dismissed or the vendor, contractor or subcontractor is found not guilty, the suspension or debarment shall be lifted automatically upon written notification and proof of final court disposition. However, nothing herein shall preclude the Director of Purchasing from imposing an additional suspension or debarment following said dismissal or finding of not guilty where the Director of Purchasing determines that the additional suspension or debarment is otherwise supported by the Purchasing Code. In such case, the suspended or debarred vendor, contractor, or subcontractor may avail themselves of the protest procedure set forth in subsection (d) below.
- (4) Charged or convicted for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County government contractor. If charges are dismissed or the vendor, contractor or subcontractor is found not guilty, the suspension or debarment shall be lifted automatically upon written notification and proof of final court disposition. However, nothing herein shall preclude the Director of Purchasing from imposing an additional suspension or debarment following said dismissal or finding of not guilty where the