



Finance and Administrative Services Department

PURCHASING DIVISION

115 S. Andrews Avenue, Room 212 • Fort Lauderdale, Florida 33301 • 954-357-6066 • FAX 954-357-8535

Certified Mail No. 7003 3110 0005 0259 3904

January 5, 2017

William G. Salim, Jr.
Moskowitz, Mandell, Salim & Simowitz, P.A.
800 Corporate Drive, Suite 500
Fort Lauderdale, FL 33334

Re: Protest - RFP R1422515P1 – Public Safety Radio APCO Project 25 700 MHz
Communication System

Dear Mr. Salim:

We are in receipt of your timely protest letter dated December 8, 2016 on behalf of your client, Harris Corporation, and the required \$5,000.00 protest filing fee. The protest is based upon five assertions as follows:

- (1.) The Motorola "material" litigation disclosure is incomplete and inaccurate;
- (2.) Motorola included substantial exceptions to the County's Agreement;
- (3.) Motorola, the incumbent vendor, could not satisfy demonstration requirements;
- (4.) Sunshine law violation; and
- (5.) Process deficiencies that tainted the Procurement and the Evaluation.

The following will address your multiple assertions, point-by-point, to explain my determination based upon the Procurement Code and established Committee procedures.

Protest Assertion No. 1:

"The Motorola 'Material' Litigation Disclosure is Incomplete and Inaccurate. The Code, the Solicitation and general competitive bidding law require that proposals submitted be accurate and complete. This insures that all proposals are fairly evaluated and prevents after the fact changes once the proposals are opened. Yet, Motorola's Litigation Disclosure is misleading, if not incomplete and inaccurate." ... "Clearly, Motorola's litigation disclosures and Litigation History Form are misleading, incomplete and quite simply, false. It failed to disclose material litigation, as defined by the clear and unambiguous language of the Solicitation, because it involved the same or substantially similar radio systems as sought under the Solicitation and which allegedly resulted in death and severe injury to police officers and firefighters. As a result, Motorola should have been found non-responsive and/or non-responsible, and its Proposal rejected."

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 2

Response No. 1:

It is correct that Motorola made no litigation disclosure in its RFP proposal. In answer to the RFP's instruction to "disclose to the County all 'material' cases filed, pending or resolved during the last three (3) years prior to the solicitation response due date..." Motorola submitted the RFP's Litigation History Form on which it indicated that "[t]here are no material cases for this vendor..." When the County Attorney's Office searched online legal databases for Motorola litigation, they discovered more than fifty undisclosed cases for Motorola Solutions but were unable to determine if these cases were material due to the lack of information about particular cases. The Director of Purchasing Recommendation Memorandum summarized this litigation information and both vendors (Motorola Solutions and Harris Corporation) were given a 48-hour period within which to respond to the Purchasing Division in order to clarify or provide commentary regarding anything which appeared to be incorrectly stated in the Memorandum.

In response to the Director of Purchasing Recommendation Memorandum, Motorola submitted a message appended to an existing copy of its original proposal page concerning Responsibility Criteria, Paragraph 3.1.1., stating "Motorola Solutions has reviewed the list of approximately fifty lawsuits that were searched by Broward County and Motorola Solutions advises that such lawsuits are immaterial to the work and products involved in this solicitation because the lawsuits either involve Motorola Mobility, another cell phone company now; labor cases; discontinued businesses; dismissed suits, or involved asbestos-related cases. Specifically, the Gomez case is about the garnishment of an employee's wages."

It was clear from the Director of Purchasing Recommendation Memorandum that both proposers (Motorola Solutions and Harris Corporation) had more than fifty (50)+ undisclosed litigation cases.

In order to respond to the assertions that three material cases were undisclosed to the County's Evaluation Committee by Motorola Solutions, the Purchasing Division staff requested detailed information from Motorola Solutions about the three cases. We include this information below from a letter dated December 29, 2016, from LlorenteHeckler, P.A., attorneys for Motorola Solutions, Inc., which indicates that the three cases in question were not material:

"The first case identified by Harris is Erika Smith, as personal representative of the estate of Christopher Smith, deceased v. Motorola Solutions, Inc., Case No. 37 20105 CA 002884. This case involves alleged human error in the use of Motorola's PremierOne Computer Aided Dispatch (CAD) system in the City of Tallahassee, FL and Leon County, FL. According to the complaint, an emergency dispatcher - who was not an employee of Motorola - failed to notice hazard warnings in the CAD system and did not alert police officers that the address to which they were being dispatched presented potential threats to officers. Upon arriving at the location, one officer was ambushed and killed by an anti-government zealot. This case, while certainly tragic, did not involve Motorola's radio communications system or include allegations of non-performance. Rather, it involved allegations of human error allegedly committed by non-Motorola employees using a Computer Aided Dispatch (CAD) system. This case is simply not germane to the present solicitation."

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 3

"The second case identified by Harris is Sabina Bebee, individually and on behalf of the Estate of Robert Bebee, deceased et al. v. Motorola Solutions, Inc., et al., Case No. 2016-080066. As disclosed by Motorola in its letter to the County dated September 26, 2016, this case involves "a personal injury lawsuit filed by family of Houston firefighter who died in a fire three years ago when the building collapsed. Although the firefighters were using a Motorola radio system, the building collapsed within approximately 5 minutes of the firefighters entering the building." The complaint alleges that a critical component of a face piece-mounted communications system developed by a third-party for firefighters melted during the fire, causing malfunctions with the radio system. This lawsuit is not material to the present solicitation because: (1) it involves different products and technology than those included in Motorola's proposal; and (2) it involves damages allegedly flowing from third-party products (main part of plaintiff's allegations) and Motorola radios, not radio infrastructure equipment, which is the subject of the Solicitation; (3) it is "incident-specific" and does not include allegations of repeated and systematic failures of Motorola's radio infrastructure; (4) unlike the Harris/LVMPD case, it does not call into question Motorola's capability to perform the contract requirements. Even assuming this case was material (which it was not), Motorola disclosed the underlying allegations to the County in its September 26, 2016 letter, more than two months before the Evaluation Committee made its Recommendation and four days before the Evaluation Committee's written determination that Motorola was a responsive and responsible Proposer."

"The third case identified by Harris is Anthony Treg Livesay, et al. v. Motorola Solutions, Inc., et al., Case No. 2015-31080. This case arises out of the same fire incident described that is the subject of the Bebee case. For the same reasons described above, this case is not material to the present Solicitation. In any event, Motorola again disclosed the underlying allegations to the County in its September 26 letter, well in advance of the deliberations of the Evaluation Committee, through its disclosure of the Bebee case."

Furthermore, the assertion that "....Motorola's Litigation Disclosure is misleading, if not incomplete and inaccurate" is not a matter for protest but rather falls into another area under Procurement Code Section 21.118.a, which states in part that "[a]ny allegations of misconduct or misrepresentation on the part of a competing vendor will not be considered a protest, but will be reviewed and, if appropriate, in the County's sole discretion, used for purposes of evaluating the responsibility or qualifications of the vendor(s)."

Protest Assertion No. 2:

"Motorola Included Substantial Exceptions to the County's Agreement. As part of Staff's review of the Motorola and Harris proposals submitted, a spreadsheet entitled Terms and Conditions Exceptions Review was prepared and provided to the Evaluation Committee. A copy of such Terms and Exceptions Review is attached hereto as Exhibit "G". Those exceptions relate to the County's prescribed Agreement attached to the Solicitation and which the selected vendor is expected to sign. Harris took NO exceptions to that Agreement. On the other hand, Motorola asserted 33 separate exceptions, sixteen (16) of which Staff originally determined to be negotiable, and seventeen (17) non-negotiable which Staff recommended be rejected, as reflected on Exhibit "G".

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 4

"Notwithstanding, at the November 30, 2016 Evaluation Committee Meeting, Motorola was allowed to change its Proposal submission. Specifically, for nearly one hour of the meeting, County staff, including the Project Manager and Assistant County Attorney, proceeded through the exceptions and allowed Motorola to explain its position, and in thirteen cases, waive its exceptions. In four cases, the County elected to negotiate a solution with Motorola. In some cases, Motorola was provided an opportunity to contact its representatives located in Illinois and elsewhere, and not present at the Evaluation Committee Meeting, to determine whether it would waive certain insurance and indemnity exceptions, and report back to the Committee after the Harris presentation. As reflected in the section in this letter entitled "Sunshine Law Violation" below, those negotiations included private communications between Motorola and County Staff outside the presence of the Evaluation Committee and Harris. The County's methodology for handling one competitor's 33 exceptions in comparison to the other vendor who took no exceptions is arbitrary and inconsistent with the County's instructions and evaluation procedures."

Response No. 2:

At the November 30, 2016, Final Evaluation Committee Meeting, the object of the discussion with Motorola about their Proposal's written exceptions to the County's standard contractual terms and conditions was to inform Motorola about the seriousness of their exceptions and give them the opportunity, with full knowledge of this seriousness to the County, to withdraw (i.e. waive) those exceptions going forward. This sharing of information with the vendors also acquaints Evaluation Committee Members with the possible impact of vendor exceptions to the County's standard contractual terms and conditions. This review of terms and conditions exceptions is a continuing practice for Committee-based procurements which will result in a negotiated Agreement after the Board of Commissioners only approves the Evaluation Committee's ranking decision.

Broward County has made a practice of reviewing exceptions to terms and conditions during the Final Evaluation Committee Meeting, in the interest of full disclosure, to facilitate an "apples-to-apples" comparison of the vendors' proposals as much as possible. If the terms and conditions exceptions are not explained and understood during the Final Evaluation Committee Meeting, the Evaluation Committee cannot fairly weigh the competing proposals. To the extent exceptions can be minimized, the Evaluation Committee can better compare the proposals on equal terms. This process also helps prevent or minimize impasse concerning the non-negotiable terms and conditions, at that point several weeks and sometimes several months could be lost in the process because an impasse is formally declared and negotiations then begin with the second-ranked proposer.

The County's time is much better used in reviewing the exceptions to the County's terms and conditions at an earlier time in the process. If the vendor, after knowing the seriousness of their exceptions to the County's standard terms and conditions, decides to waive their previous exceptions, that is a very good outcome and worth the time taken at the Final Evaluation Committee Meeting. However, it is not a negotiation. After hearing the County's position on the negotiability of the exceptions, the vendor either waives the exception or not. Also, Harris did not take any exceptions to the County's terms and conditions. Therefore, the County did not need to provide them a chance to waive; if Harris had, the County would have proceeded in the same fashion as it did with Motorola.

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 5

In keeping with Section 21.118.a of the County's Procurement Code which states in part that, "[p]rotests arising from the decisions and votes of Selection/Negotiation or Selection/Evaluation Committees shall be limited to protests based upon alleged deviation(s) from established Committee procedures set forth in this Code and existing Broward County written Guidelines", the County has consistently reviewed exceptions to the County's standard terms and conditions in its Final Evaluation Committee Meeting. Because this is a consistent Broward County practice, the review of Motorola Solutions exceptions to the County's terms and conditions at the Final Evaluation Committee Meeting on November 30, 2016 is not "arbitrary and inconsistent" and is not a valid reason for protest.

Protest Assertion No. 3:

"Motorola, the Incumbent Vendor, Could Not Satisfy Demonstration Requirements. As part of the Solicitation's demonstration requirements, both vendors were required to demonstrate their proposed systems in use. The Special Instructions to Vendors, Section D., provides: 'Applies to this solicitation. The portions of the demonstration addressing field testing for both fire rescue and law enforcement will be videotaped for the use of the Evaluation Committee. See Demonstration Requirements attachment. At the discretion of the Evaluation Committee, a subsequent demonstration by the vendors may be required. Refer to Standard Instructions to Vendors for Additional Information.'

"The Solicitation's Demonstration Requirements – Addendum 1, consist of approximately 160 separate field testing elements designed to test the capability of the proposed vendor to perform the applicable requirements. It is set up to a checklist where a vendor is marked compliant or non-compliant, with possible notes added. The Subscriber Audio Testing component also indicates that it is "To be Video Recorded by Broward County."

"The Harris demonstrations occurred at the Coral Gables Public Works Department and Harris' Lynchburg, Virginia headquarters on October 17 and 19-20, 2016, respectively. The Motorola demonstrations occurred in Plantation and Fort Lauderdale on November 9 and 10, 2016. Staff appointed a Technical Review Team to attend those demonstrations and report back to the Evaluation Committee as to its observations. The Technical Review Team was provided a Technical Review Checklist consistent with the Demonstration Requirements – Addendum 1, with the approximately 160 Solicitation capability requirements for those demonstrations. The Team was provided the opportunity solely to check whether the demonstration requirement was "Compliant," "Non-Compliant," or "Document Provided." In turn, Staff prepared a "Vendor Demonstration Fact Finding Report," including a "Demonstration Response Matrix Summary," summarizing the results of the demonstrations for each proposer. The Harris demonstration was not video or audio recorded, not is there any evidence to suggest the Motorola demonstrations were. Although procurement document changes are normally reflected by Addendum issued prior to the Solicitation's submission deadline, no such Addendum exists with respect to the videotape requirement. Instead, by October 3, 2016 e-mail after the submission deadline and September 30, 2016 Evaluation Committee Meeting, the County decided not to tape the demonstrations. The reasons therefore are unknown, and the September 30, 2016 Evaluation Committee Meeting Minutes reflect no formal consideration by the Committee."

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 6

"Also, nowhere in the Solicitation is the composition, structure or purpose of this Technical Review Team addressed. In fact, it is unclear how the Technical Review Team was selected or by whom. The Evaluation Criteria within the Solicitation, Addendum 1, clearly provide substantial points, namely 40, for "Project Approach," which is in turn dependent on factors arising out of the demonstrations. The Evaluation Committee did not observe those demonstrations and had to rely upon and review the Checklists, Reports and Summaries referenced above and prepared by the Technical Review Team or Staff. Contrary to the express terms of the Solicitation, the Evaluation Committee was provided no audio or video recordings of the demonstrations of either vendor. Moreover, as indicated by the Minutes of the November 21, 2016 Evaluation Committee Meeting, it is apparent that the opinions of the Technical Review Team, including their opinions noted on the Checklists, were wrongly shared with the Evaluation Committee. This is even though Assistant County Attorney Jones expressly cautioned that such opinions could not be considered by the Evaluation Committee [in light of which, the comments should not have been shared at all and the Checklists redacted solely to show whether the vendor was "Compliant" or "Non-compliant."]."

"Aside from the failure of the Solicitation to provide for this methodology, the results are telling. Harris could not perform various demonstration requirements largely due to its inability to obtain access to certain required software controlled by Motorola, its competing vendor for this procurement, for Motorola's PremierOne CAD system. Despite numerous request to the County, the County was unable to provide this software access to the Motorola system in order to demonstrate certain required demonstration interfaces. Those thirteen (13) demonstration requirements or capabilities are noted in the Vendor Demonstration Fact Finding Report attached hereto as Exhibit "H". However, and as authorized by the County, Harris submitted documentation indicating it could meet all applicable requirements of those thirteen demonstrations. See also, Section 5.g. below and Exhibits referenced therein."

"On the other hand, Motorola, the incumbent vendor in place for the last 25 years and controller of the keys to the applicable software and interfaces, was unable to meet forty-two (42) requirements, each of which are identified in the Vendor Demonstration Fact Finding Report attached hereto as Exhibit "I". Those requirements were allegedly satisfied by Motorola's provision of documentation that it could meet the requirements".

"Despite having a total of 29 additional inability to perform demonstration requirements, Motorola was in no way penalized. The Checklists prepared by the Technical Review Team allowed for no scoring or points attribution depending on the quality of the demonstration or the performance features thereof. This is despite the fact that the Evaluation Criteria allocated 40 points, or 40% of the total available points, for the "Project Approach" demonstrated. How could the Technical Review Team not be able to provide more than just "compliant" or "non-compliant" when the Evaluation Committee was scoring based on their observations of the demonstrations? How could the Evaluation Committee evaluate those demonstrations when it was not provided an opportunity to view them, whether in person or in recorded form as required by the Solicitation?"

".....Here, the requirements of the solicitation were not adhered to. The Evaluation Committee did not observe, in any manner, any of the demonstrations. The Technical Review Team Checklists, and the Vendor Demonstrations Fact Finding Reports, were apparently all that was provided, including the opinions and comments of the Technical Review Committee that should not have been considered."

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 7

"Yet, the Scoring Sheets of the Evaluation Committee members completed at the November 30, 2016 meeting require them to assess up to 40 points for items directly related not only to the written description of the Project Approach contained within the proposal submitted, but the demonstrations thereof required by the Solicitation. Without the Evaluation Committee members having any real knowledge of those demonstrations, Evaluation Committee members were somewhat blind as to the respective systems proposed by the vendors. The Evaluation Committee members' assessments of the respective proposer's "Project Approach" were thus not consistent with the requirements of the Solicitation and its evaluation criteria. One of the members of the Evaluation Committee, Ms. Cepero, even acknowledged that she was "technically ignorant (her words) (EC Meeting, November 30, 2016, Time: 4:14:30), and scored Harris 11 points lower than Motorola (15 points lower when only discretionary scoring is considered.) Her scores on the technical requirements were, as conceded by her, based on little to no understanding of the Solicitation's technical or demonstration requirements. Moreover, having been recently added to the Evaluation Committee to replace Rob Hernandez, who left the County's employ, it is unrealistic to assume that she, or anyone for that matter, had any real familiarity with the 1,583 page Motorola Proposal and the 2,059 page Harris Proposal, let alone the voluminous Staff documentation and Technical Review Team Checklists (or for that matter, what they meant)."

Response No. 3:

Harris Corporation has included several points under the broad heading of "**Motorola, the Incumbent Vendor, Could Not Satisfy Demonstration Requirements**". We will detail our determination on each of the multiple points as follows:

Protest Assertion 3A:

"....the County decided not to tape the demonstrations.....Under these circumstances, and the clear failure to follow the required demonstration protocols, it is clear that the Evaluation Committee's consideration of the Evaluation Criteria and scoring in accordance therewith were not consistent with the Solicitation's requirements, rendering the scoring itself arbitrary and capricious":

Response No. 3A:

In Broward County, demonstrations of systems and services proposed through the Requests for Proposals (RFP)/Evaluation Committee process have, in the majority of cases, involved software or software systems. To date, these demonstrations have been performed in a controlled Broward County environment (i.e. a single Broward County office or building location and using Broward County equipment into which the software is loaded). The County is therefore assured that each vendor will be subjected to the same controlled environment, with the same technological conditions to "test" their software, and prove that they can perform all the tasks required in the RFP solicitation document. Broward County, furthermore, is assured through this demonstration that when purchased, the awarded software can successfully perform in Broward County's information technology infrastructure.

Due to the nature of the Project 25 Public Safety Radio APCO 700 MHz Communication System which will replace the current public safety radio system, no similar controlled environment is available in Broward County Government buildings. Demonstrations, therefore, which involved the new P25 technology necessarily required alternate locations from which the two proposers (Harris Corporation and Motorola Solutions, Inc.) could provide verification that their proposed systems could perform as proposed. Understanding that there would be some demonstration items which each vendor could not demonstrate at their particular alternate locations, Broward County provided a demonstration provision that the vendor would then provide a written document attesting that their installed system could provide that demonstration function but at a different location, providing the name and address of that alternate location.

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 8

The P25 System demonstrations which the RFP solicitation referenced were held as required by the solicitation. The videotape element of the larger demonstration requirement was, however, deleted after the RFP deadline (and after which no RFP Addenda could be published) because the demonstrations for the P25 System necessarily would be held in uncontrolled non-Broward County environments. The proposed videotaped areas of the demonstrations involved 21 items out of a total of 160 demonstration items and involved only police and fire/rescue field environment scenarios. For the Broward County Purchasing Division, the overriding concern involving all the requirements and procedures for RFP procurements is that all vendors have fair access and equal opportunity to propose, demonstrate and present their systems or services. As cited above, without a controlled Broward County environment within which to demonstrate the P25 Systems, Broward County did its best to ensure that vendors' demonstrations would not be misunderstood by Evaluation Committee members who would potentially view a videotape for which each vendor's environment was not a controlled Broward County environment and each vendor's environment was different. It was believed that the videotape element could possibly provide more confusion rather than clarity for Evaluation Committee Members regarding what was occurring in the demonstrations.

Additionally, the longstanding Broward County demonstration procedure mentioned above has never involved videotaped demonstrations. For consistency with the County's previous demonstration procedures and in view of the lack of any controls on videotaping the two Harris and Motorola P25 demonstrations to ensure consistency of environment and guarantee fairness to both vendors, it was determined that the demonstrations would not be videotaped. This decision was announced at the September 30 Initial Evaluation Committee Meeting.

In summary, the demonstration requirement cited in the RFP solicitation did occur. The single element of videotaping within the demonstration was eliminated to ensure consistency and guarantee fairness. The videotaping was eliminated for both vendors and therefore did not disadvantage either vendor. We reject your assertion that the requirements of the RFP solicitation were not adhered to and rendered the scoring process by the Evaluation Committee to be arbitrary and capricious.

Protest Assertion 3B:

"Moreover, as indicated by the Minutes of the November 21, 2016 Evaluation Committee Meeting, it is apparent that the opinions of the Technical Review Team, including their opinions noted of the Checklists, were wrongly shared with the Evaluation Committee. This is even though Assistant County Attorney Jones expressly cautioned that such opinions could not be considered by the Evaluation Committee (in light of which, the comments should not have been shared at all and the Checklists redacted solely to show whether the vendor was "Compliant" or "Non-Compliant".

Response No. 3B:

The November 21, 2016 Evaluation Committee Meeting was held for the sole purpose of reviewing the Demonstration Meetings Report, and providing Evaluation Committee Members, the opportunity to ask questions of the Technical Review Team about their Fact Finding Checklists produced during the Demonstration Meeting and attached to the Demonstration Meeting Report. The Technical Review Team is comprised of persons who are subject matter experts regarding Public Safety Radio Systems. Their names were recommended by the Project Manager and they were appointed by the Director of Purchasing. The Fact Finding Checklists completed by Technical Review Team members consisted of four columns labelled "Compliant," "Non-compliant," "Document Provided" and "Comments".

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 9

During the November 21 Evaluation Committee Meeting, the Technical Review Team provided factual information which precluded rendering an opinion regarding the superiority of one P25 System over another. The Technical Review Team only noted, when asked by the Evaluation Committee, if particular features or activities required of the P25 System were demonstrated (Compliant) or not demonstrated (Non-Compliant) or, if the particular feature or activity could not be demonstrated at the particular location but was installed at another location (Document Provided). The answer by one of the Technical Review Team members when asked about "Comments" written by him on his Fact Finding Checklist indicated that his notations in the "Comments" Section of the Fact Finding Reports were there simply to remind himself of what he had seen regarding the particular demonstration activities since there was much to see, make note of, and remember during the totality of both Demonstration Meetings.

As we have indicated earlier in this response, Broward County's policy of transparency is never more important than in the area of Evaluation Committee Meetings and procurement information for those meetings. Broward County errs on the side of providing more, rather than less, information to Evaluation Committee Members for their review and evaluation. In this matter, County Staff, the Technical Review Team, and Evaluation Committee Members received the Demonstration Meetings Report together with copies of the individual Fact-Finding Checklists of Technical Review Team Members to verify against the Demonstration Meetings Report. In this, again, Broward County conducted the Demonstration Meetings and the dissemination of the results of the Demonstration Meetings consistently as it has practiced and performed Demonstrations in the past. The Technical Review Team Fact-Finding Checklist results are assembled into a Matrix document and a Cover Report is produced; the Demonstration Matrix and the individual Fact-Finding Checklists are distributed to the Evaluation Committee Members along with the Cover Report; and the Technical Review Team members are made available to Evaluation Committee members to answer any questions they may have. We therefore reject your assertion that the individual Checklists were "wrongly shared with the Evaluation Committee" because this has been the consistent practice for dissemination and review of the Technical Review Team's findings and both vendors' demonstration Checklist were shared with the Evaluation Committee.

Protest Assertion 3C:

"Aside from the failure of the Solicitation to provide for this methodology, the results are telling. Harris could not perform various demonstration requirements largely due to its inability to obtain access to certain required software controlled by Motorola, its competing vendor for this procurement, for Motorola's PremierOne CAD system. Despite numerous requests to the County, the County was unable to provide this software and access to the Motorola system in order to demonstrate certain required demonstration interfaces. These thirteen (13) demonstration requirements or capabilities are noted in the Vendor Demonstration Fact Finding Report attached hereto as "Exhibit H". However, and as authorized by the County, Harris submitted documentation indicating it could meet all applicable requirements of those thirteen demonstrations."

Response No. 3C:

The question of how Harris Corporation would be able to demonstrate the Harris Corporation P25 System interface with the Motorola PremierOne CAD System was asked during the Step Two solicitation phase of the current project and subsequently as Harris Corporation and Motorola Solutions prepared for their demonstration meetings.

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 10

The response by the Project Manager and Purchasing Division staff to the question was as follows: "As previously stated, the County does not have the freedom to distribute the CAD provider's API for the demonstration. It's the County's understanding that Harris has a customer that is currently utilizing Motorola CAD with a Harris P25 radio system and has the means to request the API. If Harris does not have a practical means to demonstrate the requested CAD interface functionality in person, then the County will accept a letter certifying that Harris can meet the required functionality along with a representative agency (agency name, address and contact information) that has implemented the feature."

The fact-finding results of the Demonstration Meetings show that Harris Corporation provided the acceptable document indicating that it is able to demonstrate the CAD interface with Motorola Premier One CAD. Because this provided document was forthcoming, it had the same effect as showing Harris Corporation as "Compliant" for that particular requirement. The resulting Demonstration Report to the Evaluation Committee followed through with this positive information. There was, therefore, no negative impact to Harris Corporation regarding the demonstration of an interface with the Motorola PremierOne CAD System.

Protest Assertion 3D:

"Despite having a total of 29 additional inabilities to perform demonstration requirements, Motorola was in no way penalized. The Checklists prepared by the Technical Review Team allowed for no scoring points attribution depending on the quality of the demonstration or the performance features thereof. This is despite the fact that the Evaluation Criteria allocated 40 points, or 40% of the total available points, for the "Project Approach" demonstrated. How could the Technical Review Team not be able to provide more than just a "compliant" or "non-compliant" when the Evaluation Committee was scoring based on their observations of the demonstrations? How could the Evaluation Committee evaluate those demonstrations when it was not provided an opportunity to view them, whether in person or in recorded form as required by the Solicitation?"

Response No. 3D:

It is not the established practice for Broward County Evaluation Committee Members to attend the Demonstration Meetings but, rather, to review the Demonstration Meeting Report compiled by subject matter experts who comprise the Technical Review Team. The members of the Technical Review Team are made available to Evaluation Committee Members during an Evaluation Committee Meeting to answer any questions that the Evaluation Committee may have concerning the fact-finding information in the Demonstration Meeting Report.

As indicated previously, Demonstrations consist of proposing vendors showing proof (i.e. demonstrating) to the Technical Review Team that they can perform a list of functions which the software or system will need to be able to perform when installed and implemented. The Technical Review Team notes factually whether the functionality requirements are performed (i.e. "Compliant") or not performed (i.e. "Non-Compliant") or, in this case, if the function can be performed at another location (i.e. "Document Provided"). The Technical Review Team does not give opinions as to whether one vendor's software or system is better than another's. The Technical Review Team remains true to reporting only the facts as they are demonstrated. The Evaluation Committee then weighs the information from the Technical Review Team against the written vendor proposals for the solicitation's software or systems.

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 11

In this set of Demonstration Meetings for the P25 Radio System, Broward County has been consistent with the established fact-finding practice for Demonstration Meeting information.

Regarding the impact of demonstrations on the 40 evaluation scoring points allocated for "Project Approach," according to established RFP/Evaluation Committee practice, the apportionment of scoring points by the Evaluation Committee members is based on the quality and comprehensiveness of each vendor's written RFP Proposal. Where software or systems are concerned, as in this P25 RFP, the Demonstration Meetings are designed as proof (i.e. demonstration) that the system which the vendor has proposed in writing is what they can actually demonstrate in operation.

According to established RFP/Evaluation Committee practice, the Project Approach scoring points (in this case 40 points) have never been based on the Evaluation Committee's viewing of the Demonstration Meetings. As we have indicated previously, Broward County has consistently provided subject matter experts to serve as Technical Review Team members for the purpose of attending demonstration meetings and reporting their findings of fact to Evaluation Committee Members. Evaluation Committee Meeting time is set aside for a review of the Demonstration Report findings as well as time to ask questions of the Technical Review Team members to gain understanding of their findings of fact. Broward County's Demonstration Meeting and Evaluation Committee procedure for this RFP project followed the established practice consistently.

Protest Assertion 3E:

"Without the Evaluation Committee members having any real knowledge of those demonstrations, Evaluation Committee members were somewhat blind as to the respective systems proposed by the vendors. The Evaluation Committee members' assessments of the respective proposer's "Project Approach" were thus not consistent with the requirements of the Solicitation and its evaluation criteria. One of the members of the Evaluation Committee, Ms. Cepero, even acknowledged that she was "technically ignorant" (her words) (EC Meeting, November 30, 2016, Time: 4:14:30), and scored Harris 11 points lower than Motorola (15 points lower when only discretionary scoring is considered). Her scores on the technical requirements were, as conceded by her, based on little to no understanding of the Solicitation's technical or demonstration requirements. Moreover, having been recently added to the Evaluation Committee to replace Rob Hernandez, who left the County's employ, it is unrealistic to assume that she, or anyone for that matter, had any real familiarity with the 1,583 page Motorola Proposal and the 2,059 page Harris Proposal, let alone the voluminous Staff documentation and Technical Review Team Checklists (or for that matter, what they meant)."

Response No. 3E:

We reject your assertion that "Evaluation Committee members were somewhat blind as to the respective systems proposed by the vendors" and we find dispute your statements regarding the contributions made by Ms. Cepero who served as a fully-functioning and well-researched member of the Evaluation Committee. Ms. Cepero, Assistant County Administrator, was appointed to fulfill the Evaluation Committee vacancy left by Roberto Hernandez, Deputy County Administrator, on September 8, 2016 providing more than sufficient time to read and review the 1,583 pages of the Motorola Proposal and the 1,726 pages of the Harris Proposal.

Furthermore, Ms. Cepero after having reviewed the proposals, asked informed questions during the Initial Evaluation Committee Meeting, the Evaluation Committee Meeting on November 21, and the Final Evaluation Committee Meeting. These questions arose from thoughtful review and study of the two proposals and the Demonstration Report, not a lack of familiarity with the subject matter.

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 12

The Evaluation Committee consists of staff members chosen for their breadth of experience, excellent judgment, and general interest in the subject matter of the particular RFP project. Ms. Cepero, as an honored member of the Evaluation Committee, exhibited her breadth of experience gained as a member of the County Administrator's Office where all community matters are under active consideration and review, especially a project as important and far-reaching in its impact as the Project 25 700MHz Public Safety Radio Communication System. Ms. Cepero also exhibited her excellent judgment through the number of questions she put to the proposers and members of County staff as she sought to resolve questions arising from her review of the proposals. In terms of general interest in the subject matter, Evaluation Committee members are not required to be technical experts concerning the projects on which they serve as Committee Members. The County's Project staff, Consultant and the Technical Review Team are subject matter experts who are relied upon for their expertise in technical matters. The Evaluation Committee members must have an interest in the subject matter and sincere desire to perform to the highest standards possible in reading, reviewing and evaluating the written proposals, demonstration reports, vendor presentations and vendor answers to questions. In this, Ms. Cepero has for many years in Broward County proven to be the "gold standard" in her Evaluation Committee participation.

In the interests of transparency and obtaining as much information as possible, the established Evaluation Committee process encourages Evaluation Committee members to question proposers and fully engage them in a review of all the information in their proposals. For the RFP R1422515P1 Evaluation Committee Meetings, this established practice was followed consistently, including the Final Evaluation Committee Meeting on November 30, 2016 when many questions were asked by Evaluation Committee members and the Consultant before final scoring occurred. It is testament to the hard work and qualifications of all Evaluation Committee members, Vendors, County Staff and Consultant and the Technical Review Team that the final scores were very close (609.27 total points for Motorola Solutions and 594.00 total points for Harris Corporation).

Protest Assertion No. 4:

"Sunshine Law Violation. At the commencement of the Evaluation Committee Meeting on November 30, 2016, and as discussed above, County Staff spent approximately an hour reviewing and negotiating Motorola's exceptions to the County's form Agreement attached to the Solicitation. Although forewarned by Staff to be able to respond to all such exceptions, and any questions by the Evaluation Committee, Motorola was not prepared with respect to certain exceptions. Motorola was then allowed to contact its corporate representatives elsewhere to obtain whatever authority was needed to address the same."

"One exception related to the insurance requirements of the Agreement that Motorola had taken exception to. In particular, Motorola flatly rejected the requirements of Section 11.5 of the Agreement that it advise the County of any claims in excess of \$250,000 against its professional liability policy. Motorola also rejected the Section 11.7's requirement that the County be provided a copy of any insurance policy upon request."

"In light of these exceptions, and unprepared to address fully, Motorola representatives and County Staff, particularly Risk Management, were permitted to leave the public meeting and engage in negotiations as to those terms. Such negotiations were conducted out of the public view, and prior to the scoring of the proposals and any recommendation of award. This is contrary to the specifications of the Solicitation, which provide for negotiations only in publicly noticed Evaluation Committee negotiation sessions. As discussed above, allowing Motorola to change its position on those exceptions after bid submission also bestowed a competitive advantage."

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 13

"Florida law is clear that all negotiations related to a competitive procurement must be conducted in the sunshine. Section 21.4 of the Code provides that "(n)egotiation of contracts, amendments thereto, and work authorizations shall be in accordance with Government in the Sunshine law." That law, Florida Statutes, Section 286.011, clearly renders the November 30, 2016 meeting of the Evaluation Committee a public meeting subject to strict recording requirements.....Allowing Motorola and County staff representatives to leave that meeting, undertake negotiations directly related to the matter being considered by the Evaluation Committee, and then subsequently scored based on those negotiated exceptions, constitutes a clear departure from the requirements of the Sunshine Law. See, Port Everglades Authority v. International Longshoremen's Association, Local 1922-1, 652 So.2d 1169 (Fla. 4th DCA 1995) (holding that excluding a competing bidder from presentations, even by asking that they voluntarily remove themselves from the meeting, during a selection committee meeting constituted a violation of the Sunshine Law). Analogously here, the negotiations between County staff and Motorola representatives as to its exceptions to the Agreement that occurred on the record during the course of the November 30, 2016 Meeting should not have been permitted to occur outside of the Sunshine, or the presence of either the Evaluation Committee or Harris. As noted above, clearly those exceptions were matters to be considered by the Evaluation Committee in scoring the proposals submitted and allowing any negotiations of the same outside the Sunshine was improper."

Response No. 4:

Much of this particular Protest Assertion was already included in Protest Assertion No. 2 (Motorola Included Substantial Exceptions to the County's Agreement). Although the Final Evaluation Committee Meeting is sunshined, and during which the Evaluation Committee and County staff review exceptions taken by vendors to Broward County's standard contractual terms and conditions, the exchange of information from County staff and the vendor is not a negotiation. The time taken during the Final Evaluation Committee Meeting is designed to inform the vendor, and the Evaluation Committee, of the importance placed by the County on various areas in the County's standard terms and conditions which could prove to be a deal-breaker if the vendor is ultimately first-ranked and begins the negotiation process with the County. At that late stage, if the County and vendor do not resolve the issue, negotiations come to an impasse and the second-ranked vendor is brought in to negotiate the contract for potential award. Valuable time is lost during this impasse period. It is better and more efficient to resolve the non-negotiable (deal-breaker) issues during the Final Evaluation Committee Meeting before vendors are evaluated, scored and ranked by the Evaluation Committee.

Furthermore, the RFP/Evaluation Committee process has been consistent in using this method of informing Evaluation Committee Members and vendors of the importance of exceptions taken to Broward County standard terms and conditions prior to evaluation, scoring and ranking of vendors in the Final Evaluation Committee Meeting. In the response above to Protest Assertion No. 2, we have indicated that Broward County has been consistent in its review of Terms and Conditions exceptions during the Final Evaluation Committee Meetings. Therefore, there is no inconsistency in practice and no violation of the Sunshine Law. The information exchanged between the County and Motorola staff did not involve negotiations, but information gathering and clarification of the vendor's exceptions.

Protest Assertion No. 5:

(There are multiple assertions under the heading "**Process Deficiencies that Tainted the Procurement and the Evaluation Thereof**". They are defined below:

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 14

Protest Assertion No. 5.a.:

"5.a. During the course of the November 30, 2016 Evaluation Committee Meeting, Motorola made numerous misstatements about its Proposal and capabilities as well as certain elements of the proposed Harris Public Safety Radio System solution. Those misstatements unduly influenced the Evaluation Committee's consideration of the Harris proposal, while also appearing to provide a competitive advantage to Motorola as the incumbent legacy provider to the County. An example of these misstatements was the Motorola claim that the proposed Harris 3-watt portable radios were in violation of Federal Communications Commission ("FCC") regulations, therefore rendering the Harris P25 system unbuildable. (November 30, 2016 EC Meeting, 1:05:00). However, such radios are in use by Harris customers throughout the country, including Florida, and are fully compliant with FCC regulations. See, FCC Grant of Equipment Authorization attached as Exhibit "J". If nothing else, the statement falsely suggests that the proposed Harris system could not be successfully integrated with the current Motorola equipment that the County owns."

Response No. 5.a.:

In the protest, you cite misstatements by Motorola Solutions in their presentation before the Evaluation Committee on November 30, 2016 relating to the Harris 3-watt portable radios and indicating that this unduly influenced the Evaluation Committee's consideration of the Harris proposal. The Procurement Code provides for redress of sales tactics which may involve misstatements, but not within the Protest process itself. Procurement Code Section 21.118.a states, "Protests arising from the decisions and votes of Selection and Evaluation Committees shall be limited to protests based upon alleged deviation(s) from established Committee procedures set forth in this Code and existing Broward County written Guidelines. Any allegations of misconduct or misrepresentation on the part of a competing vendor will not be considered a protest, but will be reviewed and, if appropriate, in the County's sole discretion, used for purposes of evaluating the responsibility or qualifications of the vendor(s)."

Protest Assertion No. 5.b.:

"5.b. Motorola proposed building a single 300 foot tower site in the Everglades. Aside from failing to address required system redundancy and back-up requirements, the permitting and environmental compliance processes required to build in the Everglades make it highly unlikely that such a tower could be built within the 18 month schedule proposed by Motorola, if at all. Verizon took almost two years to obtain required governmental approvals to solely modify its existing Everglades tower. Harris proposed using two existing tower sites, one of which was prescribed by the Solicitation Appendix B, Site Information."

"Motorola stated that it could complete building this Everglades tower and 6 more new towers in the first 10 months of their 18 month schedule (Motorola proposal page 7). This schedule seems extremely unlikely to be met given the many issues involved in construction in Broward County. Yet Motorola in their presentation to the Evaluation Committee (page 16 of their presentation) said their design had "Full Constructability" and enumerated this with a list stating "It can be built," "No guess work," and "Control your schedule."

Response No. 5.b.:

We note your skepticism regarding the claims Motorola made in their presentation and their written proposal concerning the construction of a 300 foot tower site in the Everglades. Unfortunately, there is no documentation to provide contradictory information apart from your citation of Verizon's experience.

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 15

Since this tower is proposed for the future when circumstances may be different and there is no authority to refute Motorola's claim in writing, it cannot be proven that this Motorola plan is a misrepresentation. Procurement Code Section 21.118.a, therefore, would not apply because, as it is, this is neither a protestable item (i.e. not following Evaluation Committee established practice or guidelines) nor a misrepresentation that can be verified.

Protest Assertion No. 5.c.:

"5.c. During the September 30, 2016 Evaluation Committee Meeting, and as reflected in the Summary Meeting Minutes for that meeting, Ms. Cepero requested that County Staff evaluate Motorola's performance as a County vendor. Despite repeated Motorola communications equipment failures and delays, as well as the failure of a Motorola dealer to provide the MotoTRBO technology equipment ordered over three years ago and still not deployed despite Motorola's offered assistance, no such vendor report was ever delivered by Staff to the Evaluation Committee. Yet, Past Performance as a County Vendor is clearly a portion of the Evaluation Criteria, Section 3."

Response No. 5.c.:

The Vendor Performance Evaluation Reports for Motorola and Harris Corporation were, in fact, distributed to Evaluation Committee Members prior to the November 21, 2016 Evaluation Committee Meeting. See Attachment No. 2.

Regarding the failure of the Motorola dealer to provide the MotoTRBO technology equipment ordered over three years ago, the contractor was Control Communications, not Motorola Solutions. Control Communications filed for Chapter 11 Bankruptcy protection in August 2016.

Protest Assertion No. 5.d.:

"5.d. The County currently utilizes obsolete Motorola Gold Elite dispatch consoles which are over 20 years old and these consoles have not been supported by a software update since 2007. There seems to have been some confusion about the Gold Elite software information that was asked for by the Evaluation Committee and the answer provided that related to the new MCC 7500 dispatch console platform included in the Motorola Proposal (November 30, 2016 EC Meeting, 1:42:00). The existing consoles used by the County have resulted in many dispatch issues well-known throughout the County. The new MCC 7500 consoles included in Motorola's Proposal use the same old Graphical User Interface technology contained in the obsolete Gold Elite consoles; Motorola claims this provides the County with an advantage because dispatchers will not need any new training. Motorola seems to have avoided answering the Evaluation Committee's questions that would have revealed that essentially the County will be getting much of the same old dispatch console system technology."

Response No. 5.d.:

The information about the MCC 7500 consoles included in Motorola's written proposal and the information provided during the November 30, 2016 Evaluation Committee Meeting, if constituting a misrepresentation, would not be protestable but would be addressed under Procurement Code Section 21.118.a, "...Any allegations of misconduct or misrepresentation on the part of a competing vendor will not be considered a protest, but will be reviewed and, if appropriate, in the County's sole discretion, used for purposes of evaluating the responsibility or qualifications of the vendor(s)."

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 16

Protest Assertion No. 5.e.:

"5.e. Motorola's Proposal claimed more voice talkpath capacity than any other vendor can offer in any simulcast cell. Yet, it proposed 36 voice talkpaths while Harris proposed 38 talkpaths (and the ability to provide more as needed)."

Response No. 5.e.:

The claims about the voice talkpath capacity included in Motorola's written proposal, if constituting a misrepresentation, would not be protestable but would be addressed under Procurement Code Section 21.118.a, "....Any allegations of misconduct or misrepresentation on the part of a competing vendor will not be considered a protest, but will be reviewed and, if appropriate, in the County's sole discretion, used for purposes of evaluating the responsibility or qualifications of the vendor(s)"

Protest Assertion No. 5.f.:

"5.f. As Harris has repeatedly noted, Motorola appears to have intentionally molded its P25 radio system solution into a proprietary network that only Motorola subscriber radios can be used on in order to take full advantage of proprietary software features loaded on the infrastructure. The benefits of an open source, multi-vendor P25 system will never inure to the County. Please note that the existing Motorola APX radios will work on the Harris P25 radio system proposed infrastructure and will provide all the mandatory features required by the Solicitation".

Response No. 5.f.:

We note your information about the benefits of an open source, multi-vendor P25 system. This point, however, does not indicate any procedure deviation on the part of Broward County's RFP/Evaluation Committee process. As such, this information does not present a valid reason for protest under Broward County Procurement Code Paragraph 21.118.a.

Protest Assertion No. 5.g.:

"5.g. Despite Motorola's claim that the Harris system will not provide GPS location information (November 30, 2016 EC Meeting, 1:37:12), the Harris solution does relay GPS data to the PremierOne system to map. Although the Motorola PremierOne CAD API is proprietary and was not provided for purposes of the required Solicitation demonstrations, Motorola did indicate during the course of the November 30, 2016 Meeting that it would make the PremierOne CAD software available for integration if Harris were the successful proposer. As indicated by Harris' prior correspondence attempting to obtain that information for purposes of the demonstrations, and the County's responses indicating that it could not be provided but ultimately accepting letter certifications, all attached as Composite Exhibit "K" hereto, not before the November 30, 2016 Meeting did Motorola make this offer. The inability to access this Motorola proprietary information for demonstrations provided Motorola with a competitive advantage."

Response No. 5.g.:

Based upon Motorola's position regarding the lack of availability of PremierOne CAD software for demonstration meeting purposes as opposed to the stated availability by Motorola Solutions during the November 30, 2016 Final Evaluation Committee Meeting of the PremierOne CAD software for integration, if Harris Corporation were the successful proposer, this would not represent a cause for protest because there is no deviation from the County's established RFP/Evaluation Committee procedures. If, however, this is determined to be a misrepresentation, it would be addressed under Procurement Code Section 21.118.a, "....Any allegations of misconduct or misrepresentation on the part of a competing vendor will not be considered a protest, but will be reviewed and, if appropriate, in the County's sole discretion, used for purposes of evaluating the responsibility or qualifications of the vendor(s)."

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 17

Protest Assertion No. 5.h.:

"5.h. Despite Harris proposing a technologically superior P25 radio solutions at a twenty (20%) percent lower price, Motorola was rewarded by the point formula set forth in the Solicitation. Rather than comprising twenty-five (25%) percent of the Evaluation Criteria points, the result was only an additional five (5%) percent of the scoring or 31 points to Harris. Such price differential does not even take into consideration the costs of Motorola change orders that might be required for additional equipment and support that may be needed. Had County Staff listened to Ms. Cepero's request noted in Section 5.c above, Motorola's change order history would also have been reviewed."

Response No. 5.h.:

The Vendor Performance Evaluation Reports for Motorola and Harris Corporation were, in fact, distributed to Evaluation Committee Members prior to the November 18, 2016 Evaluation Committee Meeting (**Exhibit 1**). The number of Motorola Change Orders that you reference were not included in the detail of those Vendor Performance Reports.

Regarding the difference in prices between Harris Corporation and Motorola Solutions, Harris Corporation having the lowest price received all 25 price scoring points. Motorola Solutions, having a higher price received 20.61 price scoring points. Purchasing Division staff and the Consultant reviewed the itemized price sheets which were part of the submitted RFP proposals in order to ensure that the prices quoted were based on the same (apples-to-apples) system components and services before calculating the price scoring points based on the mathematical formula established in the RFP solicitation document.

During the calculation and award of price scoring points, Purchasing Division staff and the Consultant followed the same RFP/Evaluation Committee procedures as in previous RFP projects. This process was therefore not arbitrary or capricious.

Protest Assertion No. 5.i.:

"5.i. Motorola clearly relied on its status as the County's existing vendor to take advantage of the County's existing PremierOne CAD system and APX radio investments. (November 30, 2016 EC Meeting, 59:28). Refusing the PremierOne CAD system access thwarted Harris' ability to fully demonstrate its proposed solution, and provided Motorola with a competitive advantage. But Harris can in fact integrate with the County's existing PremierOne CAD system. The County's APX radios will work on the proposed Harris infrastructure equipment as demonstrated to the County's Technical Committee members in both Coral Gables and in Lynchburg, VA."

Response No. 5.i.:

We note that Motorola indicated during the November 30, 2016 Evaluation Committee Questions and Answer Period that PremierOne CAD System would be available to integrate with the Harris System if Harris Corporation was awarded the contract.

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 18

The Demonstration process allowed proposers to provide a document attesting at which other location the demonstration item would be available, if vendors could not demonstrate particular demonstration items at the Demonstration Meeting location. Because of this provision, there was no diminution within the Technical Review Team's Demonstration Report for Harris Corporation regarding this item. In fact, both vendors - Harris Corporation and Motorola Solutions - had demonstration items for which they presented documents with information about alternate locations where the particular demonstration items were available.

Because the rules and procedures for the Demonstration Meetings were the same for both vendors, neither vendor was disadvantaged during the demonstrations. Additionally, the Demonstration Meeting procedures followed established RFP/Evaluation Committee practice and guidelines. The Demonstration Meetings are therefore not a reason for protest under Procurement Code Section Paragraph 21.118.a.

Protest Assertion No. 5.j.:

"5.j. Despite its efforts to portray itself as a strong and vibrant company with a huge local presence, Motorola is simply not the same company that it was 40 years ago when it first obtained the public safety radio contract for the County, nor even what it was ten years ago. Motorola no longer owns its Plantation facility and occupies only a fraction of the floor space as tenant. Its local employment rolls have dropped from over 5,000 employees several years ago to hundreds today, making it one of Broward County's largest lay-offs in the last five years. Efforts by the Evaluation Committee to get a firm commitment that its operations would not be moved off-shore were greeted with no promises."

Response No. 5.j.:

We note the information above as did the Evaluation Committee on November 30, 2016. It is impossible to know the impact of this information on the decision of the Evaluation Committee Members. The responses or lack of responses by a vendor to Evaluation Committee questions are part of the established procedures for Final Evaluation Committee Meetings and therefore this information is not eligible for protest under Broward County Procurement Code Section Paragraph 21.118.a.

Protest Assertion No. 5.k.:

"5.k. When questioned about a recent Motorola radio system failure that took down the County's system several weeks ago, the County Project Manager was quick to note that it was caused by a power failure at the Public Safety building. (November 30, 2016 EC Meeting, 2:05:55). He added that it was a relatively common occurrence. Clearly, the shutdown of the County's public radio system should not be caused by a power failure, which one could reasonably expect to occur frequently due to Florida's title as the lightning strike capital of the United States, positioning in a hurricane alley, and summer heat brown-outs. Instead, the question is whether the existing system, and the Motorola proposed system, have a single point of failure due to the lack of a back-up power supply. Like the Everglades tower discussed above, there is no redundancy, no back-ups, and no assurances, all contrary to the Solicitation specifications."

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 19

Response No. 5.k.:

I note the information above as did the Evaluation Committee on November 30, 2016. Although the information was new and not distributed to the Evaluation Committee prior to the meeting, I do not find any deviation in the Evaluation Committee process regarding this information which was brought forward by an Evaluation Committee member based upon their first-hand experience with the information. The response to Evaluation Committee questions by the Project Manager, in this case, is part of the established procedure for the Final Evaluation Committee Meeting, and therefore this information is not eligible for protest under Broward County Procurement Code Section Paragraph 21.118.a.

Upon review of the documents and the proceedings of the Evaluation Committee, I find that the Evaluation Committee conducted its business appropriately and within the established guidelines, practices and procedures set forth in the Broward County Procurement Code, Ordinances and existing written guidelines. There were no deviations from these requirements. The Evaluation Committee did not disregard the County's procurement practices nor did it contravene governing law.

As indicated previously, Section 21.118.a of the Procurement Code states that protests arising from the decision and votes of an Evaluation Committee shall be limited to protests based upon alleged deviation(s) from established Committee procedures set forth in the Broward County Procurement Code and existing Broward County written guidelines as stated in Section 21.118.a of the Broward County Procurement Code. After reviewing this matter thoroughly, it is my determination that the protest matter does not involve allegations concerning deviations from established Committee procedures. Instead, this protest questions, in large part, the statements and information given or allegedly omitted by Motorola Solutions, Inc. during the course of the RFP/Evaluation Committee process for RFP R1422515P1. The evaluation process followed for this RFP complied with the County's established procedures and there were no deviations from the Broward County Procurement Code or existing written guidelines. The protest is therefore denied in accordance with Section 21.118.a of the Broward County Procurement Code.

In accordance with the Broward County Procurement Code, sub-section 21.120.a.1, "[a]ny person having a substantial interest in the matter, who is dissatisfied or aggrieved with the notification of the Director of Purchasing's determination regarding the resolution of a protested solicitation or proposed award or a determination to debar or refusal to reinstate, must, within ten (10) calendar days of such notification, appeal said determination to the County in accordance with the hearing procedures contained in sub-section 21.118." In accordance with sub-section 21.120.c.4 of this Code, "[t]he Hearing Officer shall only determine whether procedural due process has been afforded, whether essential requirements of law have been observed, and whether the Purchasing Director's findings are arbitrary, capricious, or an abuse of discretion or whether such findings are in accordance with the law or are unsupported by substantial evidence as a whole." Substantial evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion.

William G. Salim, Jr., Moskowitz, Mandell, Salim & Simowitz, P.A.
Protest - RFP R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication
System
January 5, 2017
Page 20

In order to request a hearing before a Hearing Officer, you must, within ten (10) calendar days of receipt of this letter, provide a written request for such a hearing. Your written request must be addressed to the Director of Purchasing, 115 South Andrews Avenue, Room 212, Fort Lauderdale, Florida 33301. The request must briefly state the facts and arguments upon which the appeal is made; must be timely made; and must be accompanied by an appeal bond equal to 1% of the estimated contract amount as defined in Subsection 21.118.a.6 of the Broward County Procurement Code or \$25,000, whichever is less and conditioned upon payment of all costs and fees awarded the County pursuant to sub-section 21.120.c.7 of the Procurement Code in the form as attached hereto. In lieu of the appeal bond, the County may accept cash, money order, certified check, or cashier's check, payable to Broward County Board of County Commissioners. Failure to provide the written request and the bond or other security within the time prescribed shall constitute a waiver of proceedings under the Procurement Code.

Sincerely,



Brenda J. Billingsley, Director
Purchasing Division

Attachments

BJB/kw/lq

- c: Alphonso Jefferson, Assistant County Administrator
- Brett H. Bayag, Acting Director, Office of Regional Communications & Technology
- Jose De Zayas, E911 Communications Administrator/Radio Systems, Office of Regional Communications & Technology
- Karen Walbridge, Purchasing Manager, Purchasing Division
- Michael Mullen, Purchasing Agent, Purchasing Division
- Glenn M. Miller, Assistant County Attorney, Office of the County Attorney
- Daphne Jones, Assistant County Attorney, Office of the County Attorney



Finance and Administrative Services Department
PURCHASING DIVISION

115 S. Andrews Avenue, Room 212 • Fort Lauderdale, Florida 33301 • 954-357-6066 • FAX 954-357-8535

DATE: November 16, 2016

TO: Evaluation Committee Members

FROM: Brenda J. Billingsley, Director, Purchasing Division **Brenda J. Billingsley**

SUBJECT: Vendor Evaluations - Harris Corporation and Motorola Solutions, Inc.- Step Two RFP R1422515P1, Public Safety Radio APCO Project 25 700MHz Communication System

Digitally signed by Brenda J. Billingsley
DN: cn=Brenda J. Billingsley, o=Broward
County, ou=Purchasing Division,
email=bbillingsley@broward.org, c=US
Date: 2016.11.18 15:40:27 -0500

During the September 30, 2016, Initial Evaluation Committee Meeting, Evaluation Committee Members noted that no evaluation scores had been cited in the Director of Purchasing Recommendation Memorandum and requested that vendor evaluations be completed for County contracts with both vendors. The following information is provided for the Evaluation Committee:

Harris Corporation has the following contracts with Broward County:

N1376003A1, Automatic Dependant Surveillance - Broadcast Vehicle Squitter Units for the Airport:
There is no vendor evaluation because the County has not yet distributed a Notice to Proceed to Harris Corporation in order to begin shipment of the equipment for this project.

A1345023A1, Software License, Maintenance and Support for the Acclaim Official Records System:
There is no vendor evaluation with Harris Local Government Solutions, Inc., an unrelated division of Harris Corporation, because the Acclaim Official Records System Software and Support contract used by Records, Taxes and Treasury Division was originally transacted with Aptitude Solutions, Inc. This software company was then acquired by Harris Local Government Solutions.

Motorola Solutions, Inc. has the following contracts with Broward County:

R1419125P1, P25 Overlay System and Services

R1137908P1, Next Generation Computer-Aided Dispatch System Software License, Maintenance, and Support

D1102905A1, Motorola Hosted Master Site

A1209701A1, Motorola Master Maintenance and Service

A1190343G1, Motorola Radio Repair Parts and Services

There is one Periodic Service Evaluation for A1209701A1, Motorola Master Maintenance and Service Agreement in Contracts Central for Motorola Solutions, Inc with an overall rating of 4.68 out of a possible rating of 5.0.

There is one Periodic Service Evaluation for D1102905A1, Motorola Hosted Master Site in Contracts Central for Motorola Solutions, Inc with an overall rating of 4.76 out of a possible rating of 5.0.

There is one Completed Service Evaluation for R1419125P1, P25 Overlay System and Services in Contracts Central for Motorola Solutions, Inc with an overall rating of 4.95 out of a possible rating of 5.0.

Vendor Evaluations Memo
RFP No. R1422515P1, Public Safety Radio APCO Project 25 700MHz Communication System
November 16, 2016
Page 2 of 2

- c. Brett Bayag, Director, Office of Regional Communications and Technology
- Glenn Miller, Assistant County Attorney, County Attorney's Office
- Rene Harrod, Assistant County Attorney, County Attorney's Office
- Jose DeZayas, Project Manager, Office of Regional Communications and Technology
- Karen Walbridge, Purchasing Manager, Purchasing Division
- Mike Mullen, Purchasing Agent, Purchasing Division

BJB/mm/hmm

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
PERIODIC SERVICE EVALUATION
OF PRIME VENDOR - MOTOROLA SOLUTIONS INC
RATING PERIOD FROM 10/1/2015 TO 9/30/2016

OPEN END CONTRACT - TWO PARTY AGREEMENT		
Agreement Nbr / Title A1209701A1 / Motorola Master Maintenance and Service Agreement		
Not To Exceed Amount \$5,913,842.57	Used Amount \$8,036,863.10	
EVALUATION SUMMARY		
MOTOROLA SOLUTIONS INC Is RECOMMENDED For Future Contracts Remarks:		Numerical Score 4.68
Overall Rating	EXCELLENT	
Unsatisfactory (1.0 - 1.8) Poor (1.81 - 2.59) Fair (2.60 - 3.19) Good (3.20 - 4.49) Excellent (4.50 - 5.00)		
COUNTY CONTACT INFORMATION		
Overseeing Division OFFICE OF REGIONAL COMMUNICATIONS & TECHNOLOGY		
Contract Administrator BRETT BAYAG	Email: bbayag@broward.org	
APPROVED EVALUATION		
Rated By Jose M. De Zayas Date: 10/28/2016		Reviewed By Jose M. De Zayas Date: 10/28/2016

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
PERIODIC SERVICE EVALUATION
OF PRIME VENDOR - MOTOROLA SOLUTIONS INC
RATING PERIOD FROM 10/1/2015 TO 9/30/2016

A) Quality	Section Score: 4.56
Evaluation Question	Rating
1. How well did the vendor's services meet the contract specifications?	5 - Excellent
2. How accurate and timely were any necessary repairs or reconfigurations?	4 - Good
3. How appropriate were vendor recommended repairs or upgrades?	5 - Excellent
4. How accurate were vendor reports of services provided?	4 - Good
5. How proactive was vendor in self-monitoring to ensure required service quality was met?	4 - Good
6. How well did vendor pass inspections of services on the first inspection?	5 - Excellent
7. How complete and timely did the vendor submit warranties, manuals, etc.?	5 - Excellent
8. How qualified and knowledgeable were the vendor's staff in the performance of the specified work?	5 - Excellent
9. How would you rate the overall quality of work?	4 - Good
Comments:	
B) Quantity	Section Score: 5.00
Evaluation Question	Rating
1. How accurate were the estimated service hours to the actual hours of service provided?	5 - Excellent
2. How accurate were estimated services to those actually needed to complete the project?	5 - Excellent
Comments:	
C) Delivery	Section Score: 4.88
Evaluation Question	Rating
1. How well did the vendor comply with the contract requirements for delivery and/or scheduling for completion of services?	5 - Excellent
2. How timely was the vendor's response to replacing damaged goods?	5 - Excellent
3. How timely was the vendor in requesting inspections or submittal of completion reports?	4 - Good
4. How responsive was the vendor to correcting inspection failures?	5 - Excellent
5. How clear and understandable were vendor invoices and reports?	5 - Excellent
6. How accurate were vendor invoices?	5 - Excellent
7. How prompt and responsive was the vendor when sending invoices and resolving any invoice discrepancies?	5 - Excellent
8. How complete and accurate was documentation of pass thrus for invoices?	N/A
9. How accurate were close out procedures followed (e.g. documents provided at closeout - packing slips, invoices, technical manuals, etc.) ?	5 - Excellent
Comments:	

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
PERIODIC SERVICE EVALUATION
OF PRIME VENDOR - MOTOROLA SOLUTIONS INC
RATING PERIOD FROM 10/1/2015 TO 9/30/2016

D) Customer Service		Section Score: 4.33
Evaluation Question		Rating
1. How promptly were County staff's communications responded to, including requests for information, proposals, and quotes?		3 - Fair
2. How proactive was the vendor in addressing County staff's problems or concerns regarding the service?		4 - Good
3. How courteous/professional was the vendor in working with the County, sub-vendors, County tenants/customers?		5 - Excellent
4. How sensitive/responsive was the vendor to working around County operational needs?		5 - Excellent
5. How consistent and clear were the vendor communications with County staff?		4 - Good
6. How responsive and timely was the vendor in providing emergency services and/or support?		5 - Excellent
Comments:		
E) Support		Section Score: 4.83
Evaluation Question		Rating
1. How close was the level of vendor technical expertise to what was needed to support the service?		5 - Excellent
2. How timely was the vendor response compared to the contract requirements?		5 - Excellent
3. How clear was the vendor information regarding the warranty or replacement policy?		5 - Excellent
4. How well did the vendor respond to warranty service requests?		5 - Excellent
5. How timely were repairs completed?		5 - Excellent
6. How well did the vendor coordinate any sub vendors?		4 - Good
Comments:		
G) Living Wage Compliance		Section Score: N/A
Evaluation Question		Rating
1. How prominent was the Living Wage rate provision poster displayed in workplace?		N/A
2. How timely was the vendor in providing the three language statement with each covered employee in the first paycheck or direct deposit slip and every six months thereafter in accordance with the Living Wage Ordinance?		N/A
3. How timely and complete were the required compliance payroll reports submitted?		N/A
4. How proactive was the vendor in ensuring Living Wage compliance, including inserting into subcontracts, by any subcontractor with the Living Wage Ordinance as it applies to the subcontract?		N/A
5. If applicable, how cooperative was the vendor in responding to and resolving any employee complaints regarding alleged violations of Living Wage contract requirements?		N/A
Comments:		

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
PERIODIC SERVICE EVALUATION
OF PRIME VENDOR -
RATING PERIOD FROM 10/1/2015 TO 9/30/2016

OPEN END CONTRACT - TWO PARTY AGREEMENT		
Agreement Nbr / Title D1102905A1 / Motorola Hosted Master Site		
Not To Exceed Amount \$1,693,121.72	Used Amount \$1,930,621.72	
EVALUATION SUMMARY		
Remarks:		Numerical Score 4.76
Overall Rating	EXCELLENT	
Unsatisfactory (1.0 - 1.8) Poor (1.81 - 2.59) Fair (2.60 - 3.19) Good (3.20 - 4.49) Excellent (4.50 - 5.00)		
COUNTY CONTACT INFORMATION		
Overseeing Division OFFICE OF REGIONAL COMMUNICATIONS & TECHNOLOGY		
Contract Administrator BRETT BAYAG	Email: bbayag@broward.org	
APPROVED EVALUATION		
Rated By Jose M. De Zayas Date: 11/15/2016	Reviewed By Jose M. De Zayas Date: 11/15/2016	

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
PERIODIC SERVICE EVALUATION
OF PRIME VENDOR -
RATING PERIOD FROM 10/1/2015 TO 9/30/2016

A) Quality	Section Score: 4.88
Evaluation Question	Rating
1. How well did the vendor's services meet the contract specifications?	5 - Excellent
2. How accurate and timely were any necessary repairs or reconfigurations?	5 - Excellent
3. How appropriate were vendor recommended repairs or upgrades?	5 - Excellent
4. How accurate were vendor reports of services provided?	4 - Good
5. How proactive was vendor in self-monitoring to ensure required service quality was met?	5 - Excellent
6. How well did vendor pass inspections of services on the first inspection?	5 - Excellent
7. How complete and timely did the vendor submit warranties, manuals, etc.?	N/A
8. How qualified and knowledgeable were the vendor's staff in the performance of the specified work?	5 - Excellent
9. How would you rate the overall quality of work?	5 - Excellent
Comments:	
B) Quantity	Section Score: N/A
Evaluation Question	Rating
1. How accurate were the estimated service hours to the actual hours of service provided?	N/A
2. How accurate were estimated services to those actually needed to complete the project?	N/A
Comments:	
C) Delivery	Section Score: 4.75
Evaluation Question	Rating
1. How well did the vendor comply with the contract requirements for delivery and/or scheduling for completion of services?	5 - Excellent
2. How timely was the vendor's response to replacing damaged goods?	N/A
3. How timely was the vendor in requesting inspections or submittal of completion reports?	N/A
4. How responsive was the vendor to correcting inspection failures?	5 - Excellent
5. How clear and understandable were vendor invoices and reports?	N/A
6. How accurate were vendor invoices?	5 - Excellent
7. How prompt and responsive was the vendor when sending invoices and resolving any invoice discrepancies?	4 - Good
8. How complete and accurate was documentation of pass thrus for invoices?	N/A
9. How accurate were close out procedures followed (e.g. documents provided at closeout - packing slips, invoices, technical manuals, etc.) ?	N/A
Comments:	

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
PERIODIC SERVICE EVALUATION
OF PRIME VENDOR -
RATING PERIOD FROM 10/1/2015 TO 9/30/2016

D) Customer Service		Section Score: 4.50
Evaluation Question	Rating	
1. How promptly were County staff's communications responded to, including requests for information, proposals, and quotes?	4 - Good	
2. How proactive was the vendor in addressing County staff's problems or concerns regarding the service?	4 - Good	
3. How courteous/professional was the vendor in working with the County, sub-vendors, County tenants/customers?	5 - Excellent	
4. How sensitive/responsive was the vendor to working around County operational needs?	5 - Excellent	
5. How consistent and clear were the vendor communications with County staff?	4 - Good	
6. How responsive and timely was the vendor in providing emergency services and/or support?	5 - Excellent	
Comments:		
E) Support		Section Score: 5.00
Evaluation Question	Rating	
1. How close was the level of vendor technical expertise to what was needed to support the service?	5 - Excellent	
2. How timely was the vendor response compared to the contract requirements?	5 - Excellent	
3. How clear was the vendor information regarding the warranty or replacement policy?	N/A	
4. How well did the vendor respond to warranty service requests?	N/A	
5. How timely were repairs completed?	5 - Excellent	
6. How well did the vendor coordinate any sub vendors?	N/A	
Comments:		
G) Living Wage Compliance		Section Score: N/A
Evaluation Question	Rating	
1. How prominent was the Living Wage rate provision poster displayed in workplace?	N/A	
2. How timely was the vendor in providing the three language statement with each covered employee in the first paycheck or direct deposit slip and every six months thereafter in accordance with the Living Wage Ordinance?	N/A	
3. How timely and complete were the required compliance payroll reports submitted?	N/A	
4. How proactive was the vendor in ensuring Living Wage compliance, including inserting into subcontracts, by any subcontractor with the Living Wage Ordinance as it applies to the subcontract?	N/A	
5. If applicable, how cooperative was the vendor in responding to and resolving any employee complaints regarding alleged violations of Living Wage contract requirements?	N/A	
Comments:		

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
COMPLETED SERVICE EVALUATION
OF PRIME VENDOR -

OPEN END CONTRACT - TWO PARTY AGREEMENT		
Agreement Nbr / Title R1419125P1 / 700MHz Interoperable Overlay System FDEM GRANT		
Not To Exceed Amount \$0.00	Used Amount \$341,129.00	
EVALUATION SUMMARY		
Remarks:		Numerical Score 4.95
Overall Rating	EXCELLENT	
Unsatisfactory (1.0 - 1.8) Poor (1.81 - 2.59) Fair (2.60 - 3.19) Good (3.20 - 4.49) Excellent (4.50 - 5.00)		
COUNTY CONTACT INFORMATION		
Overseeing Division OFFICE OF REGIONAL COMMUNICATIONS & TECHNOLOGY		
Contract Administrator BRETT BAYAG	Email: bbayag@broward.org	
APPROVED EVALUATION		
Rated By Jose M. De Zayas Date: 11/15/2016	Reviewed By Jose M. De Zayas Date: 11/15/2016	

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
COMPLETED SERVICE EVALUATION
OF PRIME VENDOR -

A) Quality	Section Score: 5.00
Evaluation Question	Rating
1. How well did the vendor's services meet the contract specifications?	5 - Excellent
2. How accurate and timely were any necessary repairs or reconfigurations?	N/A
3. How appropriate were vendor recommended repairs or upgrades?	N/A
4. How accurate were vendor reports of services provided?	5 - Excellent
5. How proactive was vendor in self-monitoring to ensure required service quality was met?	5 - Excellent
6. How well did vendor pass inspections of services on the first inspection?	5 - Excellent
7. How complete and timely did the vendor submit warranties, manuals, etc.?	5 - Excellent
8. How qualified and knowledgeable were the vendor's staff in the performance of the specified work?	5 - Excellent
9. How would you rate the overall quality of work?	5 - Excellent
Comments:	
B) Quantity	Section Score: 5.00
Evaluation Question	Rating
1. How accurate were the estimated service hours to the actual hours of service provided?	N/A
2. How accurate were estimated services to those actually needed to complete the project?	5 - Excellent
Comments:	
C) Delivery	Section Score: 5.00
Evaluation Question	Rating
1. How well did the vendor comply with the contract requirements for delivery and/or scheduling for completion of services?	5 - Excellent
2. How timely was the vendor's response to replacing damaged goods?	N/A
3. How timely was the vendor in requesting inspections or submittal of completion reports?	5 - Excellent
4. How responsive was the vendor to correcting inspection failures?	5 - Excellent
5. How clear and understandable were vendor invoices and reports?	5 - Excellent
6. How accurate were vendor invoices?	5 - Excellent
7. How prompt and responsive was the vendor when sending invoices and resolving any invoice discrepancies?	N/A
8. How complete and accurate was documentation of pass thrus for invoices?	N/A
9. How accurate were close out procedures followed (e.g. documents provided at closeout - packing slips, invoices, technical manuals, etc.) ?	5 - Excellent
Comments:	

BOARD OF COUNTY COMMISSIONERS, BROWARD COUNTY, FLORIDA
COMPLETED SERVICE EVALUATION
OF PRIME VENDOR -

D) Customer Service		Section Score: 4.83
Evaluation Question	Rating	
1. How promptly were County staff's communications responded to, including requests for information, proposals, and quotes?	5 - Excellent	
2. How proactive was the vendor in addressing County staff's problems or concerns regarding the service?	5 - Excellent	
3. How courteous/professional was the vendor in working with the County, sub-vendors, County tenants/customers?	5 - Excellent	
4. How sensitive/responsive was the vendor to working around County operational needs?	5 - Excellent	
5. How consistent and clear were the vendor communications with County staff?	4 - Good	
6. How responsive and timely was the vendor in providing emergency services and/or support?	5 - Excellent	
Comments:		
E) Support		Section Score: 5.00
Evaluation Question	Rating	
1. How close was the level of vendor technical expertise to what was needed to support the service?	5 - Excellent	
2. How timely was the vendor response compared to the contract requirements?	N/A	
3. How clear was the vendor information regarding the warranty or replacement policy?	5 - Excellent	
4. How well did the vendor respond to warranty service requests?	N/A	
5. How timely were repairs completed?	N/A	
6. How well did the vendor coordinate any sub vendors?	N/A	
Comments:		
G) Living Wage Compliance		Section Score: N/A
Evaluation Question	Rating	
1. How prominent was the Living Wage rate provision poster displayed in workplace?	N/A	
2. How timely was the vendor in providing the three language statement with each covered employee in the first paycheck or direct deposit slip and every six months thereafter in accordance with the Living Wage Ordinance?	N/A	
3. How timely and complete were the required compliance payroll reports submitted?	N/A	
4. How proactive was the vendor in ensuring Living Wage compliance, including inserting into subcontracts, by any subcontractor with the Living Wage Ordinance as it applies to the subcontract?	N/A	
5. If applicable, how cooperative was the vendor in responding to and resolving any employee complaints regarding alleged violations of Living Wage contract requirements?	N/A	
Comments:		

BROWARD COUNTY
PROCUREMENT PROTEST APPEAL BOND

Bond Number: _____

Contract Number: _____

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _____ a (mark one) ☐ corporation, ☐ partnership, ☐ proprietorship, organized and existing under the laws of the State of _____, and having its principal place of business at _____, as **PRINCIPAL**; and _____, a surety company, organized under the laws of the State of _____, duly authorized to do business in the State of Florida, whose principal place of business is _____, as **SURETY**, are held and firmly bound unto BROWARD COUNTY, as **OBLIGEE**, in the amount of equal to one percent (1%) of the estimated contract amount [as defined in Subsection 21.118.a.6 of this Broward County Procurement Code] or \$25,000, whichever is less, and conditioned upon payment of all costs and fees awarded the County pursuant to subsection 21.120.c.7, for the payment of which sum we, as Principal and Surety, bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THIS BOND is issued to comply with Section 21.120, Broward County Procurement Code. The above-named Principal has initiated an appeal of the Purchasing Director's determination on Principal's administrative protest regarding the Obligee's decision or intended decision pertaining to (mark one) ☐ Bid, ☐ RLI, ☐ RFP ☐ other solicitation, Number _____ submitted by _____. Said appeal is conditioned upon the posting of the bond at the time of filing the formal written request for hearing before a hearing officer.

NOW, THEREFORE, the condition of this Bond is that if the hearing officer denies the appeal, the Principal shall pay all costs and fees awarded the County pursuant to subsection 21.120.c.7 of the Broward County Procurement Code, then the obligation shall be null and void; otherwise it shall remain in full force and effect.

The Obligee may bring an action to a court of competent jurisdiction on this bond for the amount of such liability, including all costs and attorneys' fees.

PRINCIPAL: _____

BY: _____

(Print name and title)

ATTEST: _____

(CORPORATE SEAL)

(Print name and title)

(CORPORATE SEAL)

SURETY: _____

BY: _____

(Print name and title)

Florida Resident Agent _____

(Note: Power of Attorney showing authority of Surety's agent or Attorney in Fact must be attached).

LAW OFFICES
MOSKOWITZ, MANDELL, SALIM & SIMOWITZ, P.A.
800 CORPORATE DRIVE • SUITE 500
FORT LAUDERDALE, FLORIDA 33334

MICHAEL W. MOSKOWITZ¹
SCOTT E. SIMOWITZ¹
CRAIG J. MANDELL
WILLIAM G. SALIM, JR.²
SCOTT M. ZASLAV³
ARI J. GLAZER⁴
TODD A. ARMBRUSTER
ARTHUR E. LEWIS
BENJAMIN SUNSHINE⁵
RACHEL L. SIMOWITZ⁶

ALSO ADMITTED IN NY & DC⁷
ALSO ADMITTED IN MA⁸
ALSO ADMITTED IN NY & CT⁹
ALSO ADMITTED IN NY¹⁰
ALSO ADMITTED IN IL¹¹
ALSO ADMITTED IN NY & NJ¹²

BROWARD (954) 491-2000
BOCA RATON (561) 750-7700
TELECOPIER (954) 491-2051
EMAIL mmss@msslaw.com

OF COUNSEL

SHIRLEY D. WEISMAN, P.A.

William G. Salim, Jr.
wsalim@msslaw.com
Direct (954) 776-9213

CERTIFIED CIRCUIT COURT MEDIATOR¹

December 8, 2016

VIA E-MAIL AND HAND-DELIVERY

Ms. Brenda J. Billingsley, Director
Broward County Purchasing Division
115 S. Andrews Avenue, Rm. 212
Fort Lauderdale, FL 33301

Re: Harris Corporation's Protest Letter Pertaining to Proposed Recommendation of Award on Broward County Solicitation #R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication System

Dear Ms. Billingsley:

On behalf of our client, Harris Corporation ("Harris"), we hereby submit Harris's protest letter objecting to the Proposed Recommendation for Award (the "Proposed Recommendation") posted on December 1, 2016 in connection with Broward County's (the "County") Solicitation #R1422515P1, Public Safety Radio APCO Project 25 700 MHz Communication System (the "Solicitation"). This protest is timely submitted within five (5) days of the Proposed Recommendation pursuant to Section 21.118.a.2. of the Broward County Procurement Code (the "Code"), and Section S of the Standard Instructions for Vendors, in order to raise certain issues regarding the Solicitation, the evaluation of the proposals submitted in response thereto and the Proposed Recommendation. Enclosed herewith you will find Legacy Bank Cashier's Check Number 014337 in the amount of \$5,000.00 made payable to the Broward County Board of County Commissioners in payment of the filing fee required by the Code, Section 21.118.a.6., and Section S.6. of the Standard Instructions for Vendors of the Solicitation.

This protest focuses on what Harris believes is unfair, incomplete and/or inaccurate information submitted by the Proposed Recommendation's recommended vendor, Motorola Solutions, Inc. ("Motorola"), as well as new information as to the same, which should be considered in evaluating the responsiveness, responsibility and/or qualifications of Motorola. Rejecting

December 8, 2016
Page 2

Motorola's Proposal as non-responsive, and Motorola as non-responsible, in light of its failure to comply with the requirements of the Solicitation is warranted. Allowing Motorola to negotiate and change its proposal after submission, and before actual award and contract negotiations, also provided a competitive advantage in violation of the Solicitation's requirements. The Proposed Recommendation should accordingly be rescinded, and a new proposed recommended award issued to Harris. This will also save the County and its residents \$4 million dollars over the term of the contract while providing a technologically superior Harris P25 Public Radio System.

The grounds for this protest include, but are not limited to, the following:

1. **The Motorola "Material" Litigation Disclosure is Incomplete and Inaccurate**

The Code, the Solicitation and general competitive bidding law require that proposals submitted be accurate and complete. This insures that all proposals are fairly evaluated and prevents after the fact changes once the proposals are opened. Yet, Motorola's Litigation Disclosure is misleading, if not incomplete and inaccurate.

Specifically, the Solicitation, Special Instructions to Vendors, Section B, Responsibility Criteria, sets forth certain required information for a vendor to be responsive to the Solicitation. "Failure to provide any of this required information and in the manner required may result in a recommendation by the Director of Purchasing that the Vendor is non-responsive." Subsection thereof, entitled Litigation History," provides as follows:

- a. All Vendors are required to disclose to the County all "material" cases filed, pending, or resolved during the last three (3) years prior to the solicitation response due date, whether such cases were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. A case is considered to be "material" if it relates, in whole or in part, to any of the following:
 - i. A similar type of work that the vendor is seeking to perform for the County under the current solicitation;
 - ii. An allegation of negligence, error or omissions, or malpractice against the vendor or any of its principals or agents who would be performing work under the current solicitation;
 - iii. A vendor's default, termination, suspension, failure to perform, or improper performance in connection with any contract;
 - iv. The financial condition of the vendor, including any bankruptcy petition (voluntary and involuntary) or receivership; or
 - v. A criminal proceeding or hearing concerning business-related offenses in which the vendor or its principals (including officers) were/are defendants.

December 8, 2016
Page 3

- b. For each material case, the Vendor is required to provide all information identified on the Litigation History Form.
- c. The County will consider a Vendor's litigation history information in its review and determination of responsibility.
- d. If the Vendor is a joint venture, the information provided should encompass the joint venture and each of the entities forming the joint venture.
- e. A Vendor is also required to disclose to the County any and all case(s) that exist between the County and any of the Vendor's subcontractors/subconsultants proposed to work on this project.
- f. Failure to disclose any material case, or to provide all requested information in connection with each such case, may result in the Vendor being deemed non-responsive. [Emphasis added].

The required "Litigation History Form" is attached hereto as Exhibit "A." Motorola's response to this Solicitation requirement is contained on page 1242 of its 1583 page proposal (the "Proposal"), and its Litigation History Form at page 1571 of 1583, both of which are attached hereto as Composite Exhibit "B." Page 1242 provides "Additional Information" regarding the Litigation History Form, and clearly attempts to avoid the question by referring to Motorola's large size and "many civil lawsuits," and inability to maintain a "detailed history of such cases." It then adds a link to its December 31, 2015 Form 10-K filed with the Securities and Exchange Commission ("SEC"), even though the Solicitation response deadline was, and its Proposal dated, August 17, 2016. That Form 10-K, in Part I, Item 3, entitled "Legal Proceedings," vaguely states:

We are a defendant in various lawsuits, claims, and actions, which arise in the normal course of business. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on our consolidated financial position, liquidity, or results of operations. However, an unfavorable resolution could have a material adverse effect on our consolidated financial position, liquidity, or results of operations in the periods in which matters are ultimately resolved, or in the periods in which more information is obtained that changes management's opinion of the ultimate disposition.

Motorola's Proposal concludes its additional litigation information with the following note:

Note: Motorola Solutions has reviewed the list of approximately fifty lawsuits that were searched by Broward County and Motorola Solutions advises that such lawsuits are immaterial to the work and products involved in this solicitation because the lawsuits either involve Motorola Mobility, another cell phone company now; labor cases; discontinued businesses; dismissed suits, or

December 8, 2016
Page 4

involved asbestos-related cases. Specifically, the Gomez case is about the garnishment of an employee's wages. [Emphasis added].

Finally, on the required "Litigation History Form," Motorola then checks the box stating "There are no material cases for this Vendor." [Emphasis added].

Clearly Motorola's litigation disclosures are vague and suggest merely that it is subject to many suits, none of which are material or related to the services to be provided under the Solicitation. Motorola's disclosure and response are, quite simply, false in light of the Solicitation's definition of "material" quoted above. Not only does that definition include potential adverse financial effect, but also where such litigation involves "similar type of work" as the Solicitation or "allegations of negligence, error or omissions, or malpractice" against the vendor. Size, financial wealth, or number of employees or shareholders, are irrelevant to the latter inquiries.

Yet, Motorola is in fact subject to several lawsuits that are "material" as defined in the Solicitation. A quick public records search reveals the following "material" litigation which is pending, let alone filed and resolved, against Motorola:

- a. Erika Smith, as Personal Representative of the Estate of Christopher Smith, deceased v. Motorola Solutions, Inc., et al., Case No. 37 2015 CA 002884, pending in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida.

A copy of the Complaint filed in the aforesaid case on December 4, 2015 is attached hereto as Exhibit "C." That Complaint alleges that the Motorola "PremierOne CAD System" was misrepresented to the City of Tallahassee, Leon County and the Leon County Sheriff's Office as an upgraded system to avoid competitive bidding requirements, and that after acquisition, it repeatedly failed. The Complaint alleges that, as a result, Deputy Christopher Smith was murdered when the system allegedly failed and a hazard warning was not relayed to responding officers. The Complaint includes claims for strict tort liability and negligence against Motorola. Given the substantive allegations of the Complaint, and the fact that a police officer was killed as a result of the alleged failure, clearly this pending lawsuit was "material" as defined by the Solicitation. Yet, Motorola failed to disclose it, and instead misled the County and its Evaluation Committee by stating its **"lawsuits either involve Motorola Mobility, another cell phone company now; labor cases; discontinued businesses; dismissed suits, or involved asbestos-related cases."** This pending wrongful death case is extremely material and reflects that the Motorola statement that "there are no material cases" was patently false. This suit was pending as of August 17, 2016 and remains pending to date. It should have been disclosed.

- b. Sabina Bebee, individually and on behalf of the Estate of Robert Bebee, deceased, et al. v. Motorola Solutions, Inc., et al., Case No. 2016-08066 (Court 11), filed in the District Court of Harris County, Texas, removed to the United States District Court for the Southern District of Texas, Case No. 4:16-cv-00763.

December 8, 2016
Page 5

A copy of the Original Petition filed in the aforesaid case on February 8, 2016 is attached hereto as Exhibit "D." The case was subsequently removed to the federal court on March 23, 2016 and remains pending. That Petition alleges that Motorola provided the City of Houston, for use by the Houston Fire Department, a \$140,000,000 APX 7000 digital radio system that was defective and failed repeatedly, allegedly resulting in the death of three Houston firefighters and severe injury to a fourth in the "Southwest Inn" fire. The Petition alleges numerous examples of failures and defects in the radio system that contributed to the wrongful death of the firefighters. The Petition includes claims for design, marketing and product defects, negligence, agency and respondeat superior, gross negligence and breach of warranty. Compensatory damages in excess of \$1,000,000 per plaintiff, and punitive damages in excess of \$5,000,000 per plaintiff, are sought. Given the substantive allegations of the Petition, and the fact that several firefighters were killed or severely injured, this pending lawsuit was clearly "material" as defined by the Solicitation. Yet, Motorola failed to disclose it, and instead misled the County and its Evaluation Committee by stating its **"lawsuits either involve Motorola Mobility, another cell phone company now; labor cases; discontinued businesses; dismissed suits, or involved asbestos-related cases."** This pending wrongful death case is extremely material and reflects that the Motorola statement that "there are no material cases" was patently false. This suit was pending as of August 17, 2016 and remains pending to date. It should have been disclosed.

- c. Anthony Treg Livesay, et al. v. Motorola Solutions, Inc., et al., Case No. 2015-31080 (Court 125), filed in the District Court of Harris County, Texas.

A copy of the Petition filed in the aforesaid case on May 29, 2015 is attached hereto as Exhibit "E." This case arises out of the Southwest Inn fire which is the subject of the Bebee case discussed above. Substantially similar claims and allegations are asserted on behalf of the injured firefighters in this case, including compensatory damages in excess of \$1,000,000 per plaintiff, and punitive damages in excess of \$4,000,000 per plaintiff. The Petition includes claims for product defects, negligence, and gross negligence. Given the substantive allegations of the Petition, and the fact that several firefighters were killed or severely injured, this pending lawsuit was clearly "material" as defined by the Solicitation. Yet, Motorola failed to disclose it, and instead misled the County and its Evaluation Committee by stating its **"lawsuits either involve Motorola Mobility, another cell phone company now; labor cases; discontinued businesses; dismissed suits, or involved asbestos-related cases."** This pending wrongful death case is extremely material and reflects that the Motorola statement that "there are no material cases" was patently false. This suit was pending as of August 17, 2016 and remains pending to date. It should have been disclosed.

The Solicitation's Vendor Questionnaire Form concludes as follows:

As the Vendor's authorized representative, I attest that any and all statements, oral, written or otherwise, made in support of the Vendor's response, are accurate, true and correct. I also acknowledge that inaccurate, untruthful or incorrect statements made in support of the Vendor's response may be used by the County as a basis for rejection, rescission of the award, or termination of the contract and

December 8, 2016
Page 6

may also serve as the basis for debarment of Vendor pursuant to Section 21.119 of the Broward County Procurement Code.

Clearly, Motorola's litigation disclosures and Litigation History Form are misleading, incomplete and quite simply, false. It failed to disclose material litigation, as defined by the clear and unambiguous language of the Solicitation, because it involved the same or substantially similar radio systems as sought under the Solicitation and which allegedly resulted in death and severe injury to police officers and firefighters. As a result, Motorola should have been found non-responsive and/or non-responsible, and its Proposal rejected.

The Code, Section 21.41.a., provides the Director of Purchasing the right to determine the responsibility of a bidder. Section 21.41.c. further provides:

The awarding authority may consider any unresolved concern regarding an offeror, including a bidder or proposer, prior to making an award. At any time prior to award, the awarding authority may find that an offeror is not responsible to receive a particular award. The awarding authority may consider the following factors, without limitation: debarment or removal from the authorized vendors list or a final decree, declaration or order by a court or administrative hearing officer or tribunal of competent jurisdiction that the offeror has breached or failed to perform a contract, claims history of the offeror, performance history on a County contract(s), an unresolved concern, or any other cause under this Code and Florida law for evaluating the responsibility of an offeror.

At the September 30, 2016 meeting of the Evaluation Committee, the following statement regarding litigation was made at 17:49:

And just for the benefit of all the other (unintelligible) who may not know, because we rely on the proposers to disclose materiality or not, if for some reason down the road a company prevailed and we were to find out that there was a case out there that was material we would take such actions as much as even dismissing or terminating the contract if it was that much of an impact. So that's why we have to rely on their forthright.

The Summary Meeting Minutes of that meeting reflect the following discussion related to the litigation disclosure component of the responsiveness criteria:

Ms. Monica Cepero requested that the representatives of the County Attorney's Office (CAO) advise if there was anything related to disclosed or undisclosed material cases that brought up any concern by the CAO. Ms. Rene Harrod clarified that there was one case deemed material by Harris; however, there were no material cases that were undisclosed. Ms. Harrod continued that the CAO does not typically do an analysis of this information. The CAO provides proposers with the types of cases that are considered material or not material, and then the onus is on the proposers to report appropriately. There is recourse for the County if any

December 8, 2016
Page 7

material cases were discovered in the future that were not previously disclosed, including cancellation of the firm's contract.

A "responsible bidder" is generally defined as one who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance." Under the Solicitation, Code and general Florida law, the County had to consider the responsibility and responsiveness of Motorola's proposal.

Although Florida case law is clear that there is a substantial public interest in favor of saving tax dollars in awarding public contracts, it is equally clear that it cannot be done at the expense of the competitive bidding process. See, Intercontinental Properties, Inc. v. State of Florida Department of Health and Rehabilitative Services, 606 So.2d 380, 386 (Fla. 3d DCA 1992); Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc. 354 So.2d 446, 449 (Fla. 1st DCA 1978). The law is clear, even in the context of requests for proposals, that a public body is not entitled to omit or alter material provisions required by the RFP because in doing so the public body fails to "inspire public confidence in the fairness of the RFP process." Emerald Correctional Management v. Bay County Board of County Commissioners, 955 So.2d 647 (Fla. 1st DCA 2007), citing, State, Department of Lottery v. Gtech Corp., 816 So.2d 648 (Fla. 1st DCA 2001).

The following discussion of applicable law is taken from the Recommended Order entered April 4, 2012 in Pro Tech Monitoring, Inc. v. Department of Corrections, Case No. 11-5794BID, State of Florida Divisions of Administrative Hearings. Therein, the Administrative Hearing Officer recommended that the contract issued in response to an RFP for global positioning satellite electronic monitoring service be awarded to Pro Tech as the highest scoring responsive vendor, and throwing out a proposed award to BI Incorporated, on the grounds that BI's proposal contained material deviations from the RFP, generally involving the failure to provide relevant, material and required information in response to the unambiguous instructions of the RFP, thereby obtaining a competitive advantage over other vendors. Such deviations were not minor irregularities, and could not be ignored by the agency. The law cited below is equally applicable to the circumstances presented herein, and requires a determination that consideration of the Motorola proposal, despite its material exceptions to the Solicitation and Agreement required thereby, was inappropriate, and the further process of allowing Motorola to modify its proposal to eliminate those exceptions provided a clear competitive advantage.

An act is "contrary to competition" if it runs contrary to the objectives of competitive bidding, which have been long held:

to protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in various forms; to secure the best values for the [public] at the lowest possible expense ...

December 8, 2016
Page 8

Wester v. Belote, 138 So.2d 721, 723-24 (Fla. 1931); see also, Harry Pepper & Assoc., Inc. v. City of Cape Coral, 352 So.2d 1190, 1192 (Fla. 3d DCA 1977). In that regard, public officials do not have the power “to make exceptions, releases and modifications in the contract after it is let, which will afford opportunities for favoritism, whether any such favoritism is practiced or not.” Wester v. Belote, at 724. The public policy regarding exceptions and releases in contracts applies with equal force to the contract procurement.

Section 287.001 establishes the legislative intent that public procurement be intrinsically fair and open, and that it also eliminate the appearance and opportunity for favoritism so as to preserve public confidence in the process, and provides that:

The Legislature recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured.

That legislative intent has been applied to determine whether an action is contrary to competition as follows:

Thus, from Section 287.001 can be derived an articulable standard of review. Actions that are contrary to competition include those which:

- (a) create the appearance of and opportunity for favoritism;
- (b) erode public confidence that contracts are awarded equitably and economically;
- (c) cause the procurement process to be genuinely unfair or unreasonably exclusive; or
- (d) are unethical, dishonest, illegal, or fraudulent.

Syslogic Tech. Servs., Inc. v. So. Fla. Water Mgmt. Dist., Case No. 01-4385BID (Fla. DOAH Jan 18, 2002; SFWMD Mar. 6, 2002).

As to the ability of an agency to overlook items in a proposal that clearly meet the definition of a “material deviation” from its written specifications, it is clear that “a public body is not entitled to omit or alter material provisions required by the RFP because in doing so the public body fails to ‘inspire public confidence in the fairness of the [RFP] process.’” (Emphasis in original). Emerald Corr. Mgmt. v. Bay Cty. Bd. Of Cty. Comm’rs, 955 So.2d 647, 652 (Fla. 1st DCA 2007), (citing Dep’t of Lottery v. Gtech Corp., 816 So.2d 648, 651 (Fla. 1st DCA 2001)).

December 8, 2016
Page 9

Every deviation from the RFP is not material and does not mandate rejection of the proposal. The agency reserved the right to waive minor irregularities. The standard for determining whether a variance is a material deviation or a minor irregularity is as follows:

“Although a bid containing a material variance is unacceptable, not every deviation from the invitation is material.” Robinson Elec. Co. v. Dade County, 417 So.2d 1032, 1034 (Fla. 3d DCA 1982); Tropabest Foods, Inc. v. State, Dep’t of Gen. Servs., 493 So.2d 50, 52 (Fla. 1st DCA 1986) (citation omitted); Glatstein v. Miami, 399 So.2d 1005 (Fla. 3d DCA 1981), review denied, 407 So.2d 1102 (Fla. 1981). “It is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition.” Tropabest, 493 So.2d at 52; Harry Pepper & Assocs., Inc. v. City of Cape Coral, 352 So.2d 1190, 1193 (Fla. 2d DCA 1977).

Procacci Commer. Realty v. Dep’t of HRS, 690 So.2d 603, 606 (Fla. 1st DCA 1997).

The unfair bidding advantage that is conferred on a bidder who fails to provide necessary and required information

is generally threefold: (1) it provides the precious few minutes which may be saved by failing to provide a name for the appropriate blank on form D-1 and matching the name with the price used in the bid computation, (2) it allows the potential for speculation, by use of a phantom price and efforts to shop that item or trade until a subcontractor can be found at the speculative contract price, and (3) it permits a successful bidder to accept additional subcontractor bids after the bid opening, giving the opportunity for undercutting the low subcontractor on whom he relied in formulating his bid. (Emphasis added).

E. M. Watkins & Co. v. Bd. Of Regents, 414 So.2d 583, 587 (Fla. 1st DCA 1982).

The competitive advantage that is conferred on a proposer when an agency chooses to ignore a clear and unambiguous requirement that is applicable to all other potential vendors has been described as follows:

59. The touchstone of these tests for materiality—substantial advantage—is an elusive concept, to say the least, easier to state than to apply. Obviously, waiving any defect that might disqualify an otherwise winning bid gives the beneficiary of the waiver an advantage or benefit over the other bidders. In practice, differentiating between, on the one hand, “fair” advantages – i.e. those that are tolerable because they do not defeat the object and integrity of the competitive procurement process – and “unfair” (or intolerable) advantages, on the other, is exceptionally difficult; and, making matters worse, there are not (as far as the undersigned is aware) many generally recognized, consistently applied, neutral principles available for the decision-maker’s use in drawing the distinction between a “substantial” advantage and a “mere” advantage.

December 8, 2016
Page 10

60. That said, the undersigned believes that a bidder's noncompliance with a specification which was designed to winnow the field – especially one which prescribes particular characteristics that the successful bidder must possess – should rarely, if ever, be waived as immaterial. This is because such a provision acts as a barrier to access into the competition, potentially discouraging some would-be participants, namely those who lack a required characteristic, from submitting a bid.

Phil's Expert Tree Service v. Broward Co. Sch. Bd., Case No. 06-4499BID at 29-30 (Fla. DOAH Mar. 19, 2007; BCSB June 11, 2007); see also, Syslogic Technology Servs., Inc. v. So. Fla. Water Mgmt. Dist., Case No. 01-4385BID at 63, n.23 (Fla. DOAH Jan 18, 2002; SFWMD Mar. 6, 2002) ("Of course, it will usually not be known how many, if any, potential proposers were dissuaded from submitting a proposal because of one project specification or another. That is why specifications that have the capacity to act as a barrier to access into the competition ... should generally be considered material and non-waivable for that reason.").

As in Pro Tech Monitoring, *supra*, Motorola's failure to provide the required Litigation History Form as to each undisclosed material litigation, and allowing modification of its Proposal to eliminate numerous exceptions, clearly bestowed a competitive advantage.

In prior procurements, the County has specifically found that such omissions go to the heart of a vendor's responsiveness and diligence. In your January 27, 2015 letter determining the bid protest with respect to County Bid No. T1247309B1 – Temporary Debris Management Site Services [the "ITB"], a copy of which letter is attached as Exhibit "F" for your convenience, you rescinded a proposed recommendation for award to DRC Emergency Services, LLC ("DRC") for similar omissions. In light of DRC's failure to disclose certain officer affiliations and debarments, you determined that its bid submittal was untruthful and inaccurate, finding"

The actions of DRC are taken seriously by Broward County, especially since the services to be provided under this contract will protect the residents and businesses of Broward County. In addition, the federal ineligibility was for a contract similar in scope to the [ITB], in which DRC provided post-disaster services. DRC's failure to correctly respond to Question No. 19 is dishonest, contrary to acceptable business practices and cannot be ignored.

Similarly here, the Solicitation and Agreement to be awarded pursuant thereto will protect the residents and businesses of Broward County. The litigation which it failed to disclose all relates to the same or substantially similar public radio safety systems as is the subject of this Solicitation. By failing to disclose these cases, Motorola deprived the Evaluation Committee of the extremely important opportunity to ask questions and gather more information about these cases and the alleged system failures which allegedly took the lives of first responders. There is little doubt that these events would have had meaningful impact on the scoring of the Evaluation Committee, particularly the 15 points assigned to "Past Performance." Motorola's failure to correctly respond to the Solicitation's litigation history requirements is misleading, contrary to

December 8, 2016
Page 11

acceptable business practices and cannot be ignored. It is clear that the Motorola's Proposal is inaccurate, untruthful and incorrect and, as with DRC, that such Proposal should be rejected and the proposed recommendation of award rescinded. Since Motorola is not a responsive or responsible vendor, the Motorola Proposal should be rejected altogether and Harris recommended as the recommended vendor on the Solicitation.

2. Motorola Included Substantial Exceptions to the County's Agreement

As part of Staff's review of the Motorola and Harris proposals submitted, a spreadsheet entitled Terms and Conditions Exceptions Review was prepared and provided to the Evaluation Committee. A copy of such Terms and Exceptions Review is attached hereto as Exhibit "G." Those exceptions relate to the County's prescribed Agreement attached to the Solicitation and which the selected vendor is expected to sign. Harris took NO exceptions to that Agreement. On the other hand, Motorola asserted 33 separate exceptions, sixteen (16) of which Staff originally determined to be negotiable, and seventeen (17) non-negotiable which Staff recommended be rejected, as reflected on Exhibit "G."

Notwithstanding, at the November 30, 2016 Evaluation Committee meeting, Motorola was allowed to change its Proposal submission. Specifically, for nearly one hour of the meeting, County Staff, including the Project Manager and Assistant County Attorney, proceeded through the exceptions and allowed Motorola to explain its position, and in thirteen cases, waive its exceptions. In four cases, the County elected to negotiate a solution with Motorola. In some cases, Motorola was provided an opportunity to contact its representatives located in Illinois and elsewhere, and not present at the Evaluation Committee meeting, to determine whether it would waive certain insurance and indemnity exceptions, and report back to the Committee after the Harris presentation. As reflected in the section in this letter entitled "Sunshine Law Violation" below, those negotiations included private communications between Motorola and County Staff outside the presence of the Evaluation Committee and Harris. The County's methodology for handling one competitor's 33 exceptions in comparison to the other vendor who took no exceptions is arbitrary and inconsistent with the County's instructions and evaluation procedures.

The Standard Instructions for Vendors, Section J, allow the Evaluation Committee to ask questions as follows:

At any committee meeting, the Selection or Evaluation Committee members may ask questions, request clarification, or require additional information of any Vendor's submittal or proposal. It is highly recommended Vendors attend to answer any committee questions (if requested) including a representative of the Vendor that has the authority to bind.

Despite this provision for the Evaluation Committee to ask questions, there is no provision that allows Staff to solicit Motorola to change its Proposal submission before Evaluation Committee review and scoring. After the fact and having had an opportunity to review the Harris Proposal and see that it took NO exceptions, Motorola was provided an opportunity to materially alter its submission. That opportunity bestowed a clear competitive advantage on Motorola, as the

December 8, 2016
Page 12

Standard Instructions for Vendors, Section D, specifically note that the “acceptance of any exceptions taken to the terms and conditions of the County’s Agreement shall be considered a part of a Vendor’s submittal and will be considered by the Selection or Evaluation Committee.” Further, the Evaluation Committee will consider exceptions in its deliberation and scoring of the proposals, and exceptions will be “viewed unfavorably” and “ultimately may impact the overall evaluation of a Vendor’s submittal.” Allowing Motorola to change its Proposal after the submission deadline, and before scoring, provided a clear competitive advantage. If anything, the negotiation of any exceptions should have occurred after scoring and a proposed recommendation of award, during actual contract negotiations.

The legal authorities and reasoning set forth in Section 1 above are equally applicable here. The exceptions were material and Motorola should not have been permitted to alter its Proposal after the fact. The exception modifications were not in fact “clarifications”, but rather, material changes to Motorola’s Proposal that provided a competitive advantage. The law is clear that allowing changes subsequent to response opening provides a clear competitive advantage and cannot be sustained. Proceeding with such modifications subsequent to response opening and public display is clearly anti-competitive. Any other methodology is clearly at odds with applicable law and is not going to inspire any public confidence in the fairness of the competitive process. Since Motorola’s exceptions were allowed to be waived after Proposal submission, in a manner entirely inconsistent with the Solicitation’s provisions, it is not appropriate, is contrary to competition, provides an undue and unfair competitive advantage, and renders the Motorola proposal non-responsive.

3. Motorola, the Incumbent Vendor, Could Not Satisfy Demonstration Requirements

As part of the Solicitation’s demonstration requirements, both vendors were required to demonstrate their proposed systems in use. The Special Instructions to Vendors, Section D., provides:

Applies to this solicitation. The portions of the demonstration addressing field testing for both fire rescue and law enforcement will be videotaped for the use of the Evaluation Committee. See Demonstration Requirements attachment. At the discretion of the Evaluation Committee, a subsequent demonstration by the vendors may be required Refer to Standard Instructions to Vendors for Additional Information.

The Solicitation’s Demonstration Requirements – Addendum 1, consist of approximately 160 separate field testing elements designed to test the capability of the proposed vendor to perform the applicable requirements. It is set up as a checklist where a vendor is marked compliant or non-compliant, with possible notes added. The Subscriber Audio Testing component also indicates that it is “To be Video Recorded by Broward County.”

The Harris demonstrations occurred at the Coral Gables Public Works Department and Harris’ Lynchburg, Virginia headquarters on October 17 and 19-20, 2016, respectively. The Motorola

December 8, 2016
Page 13

demonstrations occurred in Plantation and Fort Lauderdale on November 9 and 10, 2016. Staff appointed a Technical Review Team to attend those demonstrations and report back to the Evaluation Committee as to its observations. The Technical Review Team was provided a Technical Review Checklist consistent with the Demonstration Requirements – Addendum 1, with the approximately 160 Solicitation capability requirements for those demonstrations. The Team was provided the opportunity solely to check whether the demonstration requirement was “Compliant,” “Non-Compliant,” or “Document Provided.” In turn, Staff prepared a “Vendor Demonstration Fact Finding Report,” including a “Demonstration Response Matrix Summary,” summarizing the results of the demonstrations for each proposer. The Harris demonstration was not video or audio recorded, nor is there any evidence to suggest the Motorola demonstrations were. Although procurement document changes are normally reflected by Addendum issued prior to the Solicitation’s submission deadline, no such Addendum exists with respect to the videotape requirement. Instead, by October 3, 2016 email after the submission deadline and September 30, 2016 Evaluation Committee meeting, the County decided not to tape the demonstrations. The reasons therefore are unknown, and the September 30, 2016 Evaluation Committee meeting minutes reflect no formal consideration by the Committee.

Also, nowhere in the Solicitation is the composition, structure or purpose of this Technical Review Team addressed. In fact, it is unclear how the Technical Review Team was selected or by whom. The Evaluation Criteria within the Solicitation, Addendum 1, clearly provide substantial points, namely 40, for “Project Approach,” which is in turn dependent on factors arising out of the demonstrations. The Evaluation Committee did not observe those demonstrations and had to rely upon and review the Checklists, Reports and Summaries referenced above and prepared by the Technical Review Team or Staff. Contrary to the express terms of the Solicitation, the Evaluation Committee was provided no audio or video recordings of the demonstrations of either vendor. Moreover, as indicated by the minutes of the November 21, 2016 Evaluation Committee meeting, it is apparent that the opinions of the Technical Review Team, including their opinions noted on the Checklists, were wrongly shared with the Evaluation Committee. This is even though Assistant County Attorney Jones expressly cautioned that such opinions could not be considered by the Evaluation Committee [in light of which, the comments should not have been shared at all and the Checklists redacted solely to show whether the vendor was “Compliant” or “Non-Compliant.”]

Aside from the failure of the Solicitation to provide for this methodology, the results are telling. Harris could not perform various demonstration requirements largely due to its inability to obtain access to certain required software controlled by Motorola, its competing vendor for this procurement, for Motorola’s PremierOne CAD system. Despite numerous requests to the County, the County was unable to provide this software and access to the Motorola systems in order to demonstrate certain required demonstration interfaces. Those thirteen (13) demonstration requirements or capabilities are noted in the Vendor Demonstration Fact Finding Report attached hereto as Exhibit “H.” However, and as authorized by the County, Harris submitted documentation indicating it could meet all applicable requirements of those thirteen demonstrations. . See also, Section 5.g. below and Exhibits referenced therein.

December 8, 2016
Page 14

On the other hand, Motorola, the incumbent vendor in place for the last 25 years and controller of the keys to the applicable software and interfaces, was unable to meet forty-two (42) requirements, each of which are identified in the Vendor Demonstration Fact Finding Report attached hereto as Exhibit "I." Those requirements were allegedly satisfied by Motorola's provision of documentation that it could meet the requirements.

Despite having a total of 29 additional inabilities to perform demonstration requirements, Motorola was in no way penalized. The Checklists prepared by the Technical Review Team allowed for no scoring or points attribution depending on the quality of the demonstration or the performance features thereof. This is despite the fact that the Evaluation Criteria allocated 40 points, or 40% of the total available points, for the "Project Approach" demonstrated. How could the Technical Review Team not be able to provide more than just a "compliant" or "non-compliant" when the Evaluation Committee was scoring based on their observations of the demonstrations? How could the Evaluation Committee evaluate those demonstrations when it was not provided an opportunity to view them, whether in person or in recorded form as required by the Solicitation?

A procuring agency must ensure that the provisions of a solicitation are clear and definitive and that all evaluation criteria have been disclosed. In Moore v. State, Dept. of Health & Rehabilitative Services, 596 So.2d 759 (Fla. 1st DCA 1992), the court found that the agency's failure to comply with its own bid evaluation criteria undermined the integrity of the competitive procurement process. The court reversed the award made by the agency, holding that the evaluation process was so tainted that it made the award arbitrary and capricious. Under Moore, deviation from the award criteria in the bid documents, or the agency's failure to follow its in house evaluation procedures, are sustainable grounds for protesting an award.

Here, the requirements of the solicitation were not adhered to. The Evaluation Committee did not observe, in any manner, any of the demonstrations. The Technical Review Team Checklists, and the Vendor Demonstration Fact Finding Reports, were apparently all that was provided, including the opinions and comments of the Technical Review Committee that should not have been considered.

Yet, the Scoring Sheets of the Evaluation Committee members completed at the November 30, 2016 meeting require them to assess up to 40 points for items directly related not only to the written description of the Project Approach contained within the proposal submitted, but the demonstrations thereof required by the Solicitation. Without the Evaluation Committee members having any real knowledge of those demonstrations, Evaluation Committee members were somewhat blind as to the respective systems proposed by the vendors. The Evaluation Committee members' assessments of the respective proposer's "Project Approach" were thus not consistent with the requirements of the Solicitation and its evaluation criteria. One of the members of the Evaluation Committee, Ms. Cepero, even acknowledged that she was "technically ignorant" (her words) (EC Meeting, November 30, 2016, Time: 4:14:30), and scored Harris 11 points lower than Motorola (15 points lower when only discretionary scoring is considered). Her scores on the technical requirements were, as conceded by her, based on little to no understanding of the Solicitation's technical or demonstration requirements. Moreover,

December 8, 2016
Page 15

having been recently added to the Evaluation Committee to replace Rob Hernandez, who left the County's employ, it is unrealistic to assume that she, or anyone for that matter, had any real familiarity with the 1,583 page Motorola Proposal and the 2,059 page Harris Proposal, let alone the voluminous Staff documentation and Technical Review Team Checklists (or for that matter, what they meant).

Given the substantial public safety implications of this Solicitation, and the specific requirements of the Evaluation Criteria contained therein, the Evaluation Committee was required to view the required demonstrations. Instead, as reflected in the Summary Meeting Minutes of the November 21, 2016 Evaluation Committee meeting, page 9 of 11, the Evaluation Committee decided to skip additional demonstrations, and never in fact witnessed any portion thereof (whether by videotape, audiotape or live). Without such information, it is impossible for the Evaluation Committee to determine the reliability, applicability or suitability of the systems proposed by the competing vendors.

Under these circumstances, and the clear failure to follow the required demonstration protocols, it is clear that the Evaluation Committee's consideration of the Evaluation Criteria and scoring in accordance therewith were not consistent with the Solicitation's requirements, rendering the scoring itself arbitrary and capricious.

4. Sunshine Law Violation

At the commencement of the Evaluation Committee meeting on November 30, 2016, and as discussed above, County Staff spent approximately an hour reviewing and negotiating Motorola's exceptions to the County's form Agreement attached to the Solicitation. Although forewarned by Staff to be able to respond to all such exceptions, and any questions by the Evaluation Committee, Motorola was not prepared with respect to certain exceptions. Motorola was then allowed to contact its corporate representatives elsewhere to obtain whatever authority was needed to address the same.

One exception related to the insurance requirements of the Agreement that Motorola had taken exception to. In particular, Motorola flatly rejected the requirements of Section 11.5 of the Agreement that it advise the County of any claims in excess of \$250,000 against its professional liability policy. Motorola also rejected the Section 11.7's requirement that the County be provided a copy of any insurance policy upon request.

In light of these exceptions, and unprepared to address fully, Motorola representatives and County Staff, particularly risk management, were permitted to leave the public meeting and engage in negotiations as to those terms. Such negotiations were conducted out of the public view, and prior to the scoring of the proposals and any recommendation of award. This is contrary to the specifications of Solicitation, which provide for negotiations only in publicly noticed Evaluation Committee negotiation sessions. As discussed above, allowing Motorola to change its position on those exceptions after bid submission also bestowed a competitive advantage.

December 8, 2016
Page 16

Florida law is clear that all negotiations related to a competitive procurement must be conducted in the sunshine. Section 21.4 of the Code provides that “[n]egotiation of contracts, amendments thereto, and work authorizations shall be in accordance with Government in the Sunshine law.” That law, Florida Statutes, Section 286.011, clearly renders the November 30, 2016 meeting of the Evaluation Committee a public meeting subject to strict recording requirements. See, Silver Express Company v. District Board of Lower Tribunal Trustees, 691 So.2d 1099 (Fla. 3rd DCA 1997); Leach-Wells v. City of Bradenton, 734 So.2d 1168 (Fla. 2d DCA 1999). Allowing Motorola and County Staff representatives to leave that meeting, undertake negotiations directly related to the matter being considered by the Evaluation Committee, and then subsequently scored based on those negotiated exceptions, constitutes a clear departure from the requirements of the Sunshine Law. See, Port Everglades Authority v. International Longshoremen’s Association, Local 1922-1, 652 So.2d 1169 (Fla. 4th DCA 1995) (holding that excluding a competing bidder from presentations, even by asking that they voluntarily remove themselves from the meeting, during a selection committee meeting constituted a violation of the Sunshine Law). Analogously here, the negotiations between County Staff and Motorola representatives as to its exceptions to the Agreement that occurred on the record during the course of the November 30, 2016 meeting should not have been permitted to occur outside of the Sunshine, or the presence of either the Evaluation Committee or Harris. As noted above, clearly those exceptions were matters to be considered by the Evaluation Committee in scoring the proposals submitted and allowing any negotiations of the same outside the Sunshine was improper.

5. Process Deficiencies that Tainted the Procurement and the Evaluation Thereof

- a. During the course of the November 30, 2016 Evaluation Committee meeting, Motorola made numerous misstatements about its Proposal and capabilities as well as certain elements of the proposed Harris Public Safety Radio System solution. Those misstatements unduly influenced the Evaluation Committee’s consideration of the Harris proposal, while also appearing to provide a competitive advantage to Motorola as the incumbent legacy provider to the County. An example of these misstatements was the Motorola claim that the proposed Harris 3 watt portable radios were in violation of Federal Communications Commission (“FCC”) regulations, therefore rendering the Harris P25 system unbuildable. (November 30, 2016 EC Meeting, 1:05:00). However, such radios are in use by Harris customers throughout the country, including Florida, and are fully compliant with FCC regulations. See, FCC Grant of Equipment Authorization attached as Exhibit “J.” If nothing else, the statement falsely suggests that the proposed Harris system could not be successfully integrated with the current Motorola equipment that the County owns.
- b. Motorola proposed building a single 300 foot tower site in the Everglades. Aside from failing to address required system redundancy and back-up requirements, the permitting and environmental compliance processes required to build in the Everglades make it highly unlikely that such a tower could be built within the 18 month schedule proposed by Motorola, if at all. Verizon took almost two years to obtain required governmental approvals to **solely modify its existing Everglades**

December 8, 2016
Page 17

tower. Harris proposed using two existing tower sites, one of which was prescribed by the Solicitation Appendix B, Site Information.

Motorola stated that it could complete building this Everglades tower and 6 more new towers in the first 10 months of their 18 month schedule (Motorola proposal page 7). This schedule seems extremely unlikely to be met given the many issues involved in construction in Broward County. Yet Motorola in their presentation to the Evaluation Committee (page 16 of their presentation) said their design had "Full Constructability" and enumerated this with a list stating "It can be built," "No guess work," and "Control your schedule."

- c. During the September 30, 2016 Evaluation Committee meeting, and as reflected in the Summary Meeting Minutes for that meeting, Ms. Cepero requested that County Staff evaluate Motorola's performance as a County vendor. Despite repeated Motorola communications equipment failures and delays, as well as the failure of a Motorola dealer to provide the MotoTRBO technology equipment ordered over three years ago and still not deployed despite Motorola's offered assistance, no such vendor report was ever delivered by Staff to the Evaluation Committee. Yet, Past Performance as a County Vendor is clearly a portion of the Evaluation Criteria, Section 3.
- d. The County currently utilizes obsolete Motorola Gold Elite dispatch consoles which are over 20 years old and these consoles have not been supported by a software update since 2007. There seems to have been some confusion about the Gold Elite software information that was asked for by the Evaluation Committee and the answer provided that related to the new MCC 7500 dispatch console platform included in the Motorola Proposal (November 30, 2016 EC Meeting, 1:42:00). The existing consoles used by the County have resulted in many dispatch issues well-known throughout the County. The new MCC 7500 consoles included in Motorola's Proposal use the same old Graphical User Interface technology contained in the obsolete Gold Elite consoles; Motorola claims this provides the County with an advantage because dispatchers will not need any new training. Motorola seems to have avoided answering the Evaluation Committee's questions that would have revealed that essentially the County will be getting much of the same old dispatch console system technology.
- e. Motorola's Proposal claimed more voice talkpath capacity than any other vendor can offer in any simulcast cell. Yet, it proposed 36 voice talkpaths while Harris proposed 38 talk paths (and the ability to provide more as needed).
- f. As Harris has repeatedly noted, Motorola appears to have intentionally molded its P25 radio system solution into a proprietary network that only Motorola subscriber radios can be used on in order to take full advantage of proprietary software features loaded on the infrastructure. The benefits of an open source, multi-vendor P25 system will never inure to the County. Please note that the

December 8, 2016
Page 18

existing Motorola APX radios will work on the Harris P25 radio system proposed infrastructure and will provide all the mandatory features required by the Solicitation.

- g. Despite Motorola's claim that the Harris system will not provide GPS location information (November 30, 2016 EC Meeting, 1:37:12), the Harris solution does relay GPS data to the PremierOne system to map. Although the Motorola PremierOne CAD API is proprietary and was not provided for purposes of the required Solicitation demonstrations, Motorola did indicate during the course of the November 30, 2016 meeting that it would make the PremierOne CAD software available for integration if Harris were the successful proposer. As indicated by Harris' prior correspondence attempting to obtain that information for purposes of the demonstrations, and the County's responses indicating that it could not be provided but ultimately accepting letter certifications, all attached as Composite Exhibit "K" hereto, not before the November 30, 2016 meeting did Motorola make this offer. The inability to access this Motorola proprietary information for demonstrations provided Motorola with a competitive advantage.
- h. Despite Harris proposing a technologically superior P25 radio solution at a twenty (20%) percent lower price, Motorola was rewarded by the point formula set forth in the Solicitation. Rather than comprising twenty-five (25%) percent of the Evaluation Criteria points, the result was only an additional five (5%) percent of the scoring or 31 points to Harris. Such price differential does not even take into consideration the costs of Motorola change orders that might be required for additional equipment and support that may be needed. Had County Staff listened to Ms. Cepero's request noted in Section 5(c) above, Motorola's change order history would also have been reviewed.
- i. Motorola clearly relied on its status as the County's existing vendor to take advantage of the County's existing PremierOne CAD system and APX radio investments. (November 30, 2016 EC Meeting, 59:28). Refusing the PremierOne CAD system access thwarted Harris' ability to fully demonstrate its proposed solution, and provided Motorola with a competitive advantage. But Harris can in fact integrate with the County's existing PremierOne CAD system. The County's APX radios will work on the proposed Harris infrastructure equipment as demonstrated to the County's Technical Committee members in both Coral Gables and in Lynchburg, VA.
- j. Despite its efforts to portray itself as a strong and vibrant company with a huge local presence, Motorola is simply not the same company that it was 40 years ago when it first obtained the public safety radio contract for the County, nor even what it was ten years ago. Motorola no longer owns its Plantation facility and occupies only a fraction of the floor space as a tenant. Its local employment rolls have dropped from over 5,000 employees several years ago to hundreds today, making it one of Broward County's largest lay-offs in the last five years. Efforts

December 8, 2016
Page 19

by the Evaluation Committee to get a firm commitment that its operations would not be moved off-shore were greeted with no promises.

- k. When questioned about a recent Motorola radio system failure that took down the County's system several weeks ago, the County Project Manager was quick to note that it was caused by a power failure at the Public Safety building. (November 30, 2016 EC Meeting, 2:05:55). He added that it was a relatively common occurrence. Clearly, the shutdown of the County's public radio system should not be caused by a power failure, which one could reasonably expect to occur frequently due to Florida's title as the lightning strike capital of the United States, positioning in hurricane alley, and summer heat brown-outs. Instead, the question is whether the existing system, and the Motorola proposed system, have a single point of failure due to the lack of a back-up power supply. Like the Everglades tower discussed above, there is no redundancy, no back-up, and no assurances, all contrary to the Solicitation specifications.

For all of the aforesaid reasons, it is respectfully submitted that Motorola's failure to accurately disclose its Litigation History, and to update that history, is in clear violation of the specifications of the Solicitation and infringes on the integrity and reliability of Motorola, rendering it non-responsible and its Proposal non-responsive. The other factors set forth above likewise compel a conclusion that Motorola was bestowed a competitive advantage in this procurement that cannot withstand scrutiny. Accordingly, Harris requests that its protest be upheld, the recommended award to Motorola rescinded, and a new proposed recommended award issued to Harris. Upon such determination, Harris' filing fee should also be returned as provided by the Code.

In accordance with the Code, Section 21.118.b., we look forward to meeting with you in an effort to settle or resolve this protest. We also urge you to seek the guidance of the County Attorney as to what all of the available options are at this point in time.

Your courtesy and consideration in this matter is greatly appreciated. Should you require any additional information or clarification, please do not hesitate to contact the undersigned.

Very truly yours,

MOSKOWITZ, MANDELL, SALIM & SIMOWITZ, P.A.

BY: 

WILLIAM G. SALIM, JR.

WGS/cl

cc: Glenn Miller, Assistant County Attorney
Client