
INQ 16-133 Kuryla

From: Kuryla, Juan (Seaport)
Sent: Friday, May 06, 2016 11:16 AM
To: Centorino, Joseph (COE) <CENTORI@miamidade.gov>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>; Sanchez, Gerald (CAO) <gks@miamidade.gov>; Lynskey, Kevin T. (Seaport) <KTL@miamidade.gov>; de Villiers, Richard (Seaport) <Rdevill@miamidade.gov>
Subject: Re: INQ 16-133 Juan Kuryla, Director, Port/Miami (Financial Interests, Sec. 2-11.1(n))

Thank you so much Joe for your quick response.

Regards, Juan

On May 6, 2016, at 11:04 AM, Centorino, Joseph (COE) <CENTORI@miamidade.gov> wrote:

Juan,

You have inquired regarding whether there would be any conflict under the County Ethics Code for you to participate in your role as Director of Port/Miami in the approval process for an energy management contract that has been recommended by a selection committee to be awarded to the Honeywell Corporation. Your written approval as Port Director would be the next step in the process prior to the contract being forwarded to the County Commission. You have made the inquiry in light of the employment of your wife as External Affairs Director at Florida Power and Light (FPL), which was one of the original bidders for this contract.

The contract in question is for the development of a long-term energy management plan to reduce the consumption of energy at the Port. Payment under the contract would come from the savings incurred by the Port over the next 16 years. Your wife's position at FPL as External Affairs coordinator began earlier this year. She is one of 4-5 external affairs coordinators for FPL. She has no ownership interest in FPL, but is paid by salary with incentive pay based upon performance. She does not involve herself with any of FPL's activities at Port/Miami.

You have also indicated that you do not generally get involved in the procurement process at the Port until the selection process is completed, and the recommendation of the selection committee is forwarded to you for approval. Your role is to approve or disapprove of the selection committee's recommendation. Your approval is necessary for the contract to go forward for approval by the administration and County Commission. You did not get involved in the selection process leading to the recommendation of Honeywell, and it is your intention, if there are no ethical prohibitions involved, to approve the contract with your signature so it can go forward to final approval.

Under these circumstances, I do not see any ethical prohibition under the County Ethics Code that might prevent you from approving the contract. Neither you nor your wife has any personal financial interest

in this approval, nor does the action affect a business in which you or your wife has a financial interest under Section 2-11.1(n) of the County Ethics Code. Moreover, the fact that it is Honeywell, not your wife's employer, that is the recommended recipient of the contract, makes it highly unlikely that your participation at this point in the process would create any appearance of impropriety.

Accordingly, you may proceed with your duties as Port Director in the approval process for this contract to be awarded to Honeywell. I appreciate your sensitivity to ethical requirements.

Sincerely,
Joe Centorino

Joseph M. Centorino

Executive Director and General Counsel
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
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From: Centorino, Joseph (COE)
Sent: Friday, May 06, 2016 11:06 AM
To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <GDIAZGR@miamidade.gov>
Subject: INQ 16-133

Please include attachment in the file for INQ 16-133.

From: de Villiers, Richard (Seaport)
Sent: Tuesday, May 03, 2016 8:40 AM
To: Centorino, Joseph (COE) <CENTORI@miamidade.gov>
Subject: PortMiami Honeywell Item

Good Morning – I am forwarding this at the request of the Director. He wants to be certain that there is no conflict of interest in regards to this specific item. Thank you for your consideration and please let us know if you require any additional information or have any questions.

Best Regards,

Richard R. de Villiers
Office of the Director
1015 N. America Way, 2nd Floor
Miami, Florida 33132
(305) 347-4823 (O)
(305) 877-1033 (C)



Memorandum



Date:

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving, and authorizing the execution of, an Energy Performance Contract and Service Agreement between Honeywell International and the County to implement energy conservation measures at PortMiami for an estimated cost of \$5,474,947; inclusive of financing, maintenance, and performance assurance costs, which \$5,085,433 million will be financed and the total amount will be paid with guaranteed savings; and approving and authorizing the execution of a finance agreement and any other related agreements necessary to implement the above contracts.

RECOMMENDATION

It is recommended that the Board of County Commissioners ("Board") adopt the attached resolution approving, and authorizing the execution of, an Energy Performance Contract and Service Agreement between Honeywell International ("Honeywell") and the County to implement energy conservation measures at PortMiami for an estimated cost of \$5,474,947 ("Contract"), inclusive of financing costs. Of this amount, \$5,085,433 will be financed and the total amount of \$5,474,947 will be paid through guaranteed savings. This resolution also approves third-party financing after a public hearing pursuant to Section 147(f) of the Internal Revenue Code of 1986 (Code) ("Finance Agreement") and any other related agreements necessary to implement the above contracts.

SCOPE

PortMiami is located primarily within Commissioner Bruno Barreiro District Five; however, the impact of this agenda item is countywide as PortMiami is a regional asset.

DELEGATION OF AUTHORITY

In addition to the authority to execute and implement the Contract, the Mayor or Mayor's designee is authorized to (i) negotiate and enter into a financial lease arrangement with a third-party institution at terms favorable to the County, (ii) approve project financing terms, (iii) exercise termination provisions, (iv) determine substantial completion of projects, and (v) approve modifications to the Energy Conservation Measures project scope of work as long as those changes uphold the contract's compliance with § 489.145, Florida Statutes, which governs and regulates the County's Energy Performance Contracting Program, and do not violate the terms of the third-party financing agreement that finances the implementation of energy conservation measures in the form of a municipal lease, energy saving warranty, or any other applicable clause or schedule of the Contract. This latter authority is required in order to provide staff with the flexibility to address material issues which may become evident only during the construction period, so long as the project cost is not exceeded.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact of this resolution totals \$5,474,947 over a period of 16 years following the implementation period. This amount is broken into two different categories, a Finance Agreement that will be financed with subsequent annual debt payments, as well as service and maintenance costs that will be paid on an annual basis as part of operating expenditures.

The Contract and Finance Agreement, including associated service and maintenance costs described in the Contract are designed to be "budget neutral," meaning that all costs associated with the project will be offset and paid by energy cost savings guaranteed by Honeywell International. It is expected and guaranteed by Honeywell that as a result of implementing this project, energy and operational

savings will be realized in the Port's operating budget on an annual basis that at least equals the annual payment required by the Port for the finance agreement as well as the operational service and maintenance costs. This project stems from an Energy Performance Contracting program previously adopted by the Board and it reflects standards as codified in Florida Statute.

The cost of the Contract Agreement is a not to exceed a total of \$5,085,433, inclusive of interest and closing costs. This amount will be financed over a 16 year period in the form of a low interest, tax free Municipal Lease which will be used to pay Honeywell when the project is completed.

An additional \$389,503 will be paid to Honeywell over a 16 year period, for annualized service and maintenance, after the work is completed. This portion of the project is not included in the \$5,085,433 Finance Agreement. The service and maintenance costs were deemed more appropriate to be funded on an annual basis through utilities and operating savings realized each year. This ongoing service as well as the maintenance consists of Measurements and Verification services (M & V), as mandated by Statutes, throughout the 16 year period and 5 years of maintenance services for the temperature and humidity controls. ✓

Not contemplated in this fiscal impact are other positive benefits that include improved efficiency in maintaining the newly designed lighting system, industrial grade air conditioning units, and water conservation upgrades. By having automation on the lighting system and newly designed air conditioning units, the Port's maintenance staff responsibilities in this area could be reduced and programmed to other critical need areas, thereby offsetting hiring additional staff in the future. Additionally, should the anticipated energy savings exceed the guaranteed energy savings, these savings would revert back to the Port and be reprogrammed in the Port's operating budget. *no need to stock Lamps*

IMPROVING/EXTENDING THE LIGHTING IN THE GARAGE & ALSO SAFETY
This energy saving project will be completed within 12 months upon the County obtaining the appropriate third-party financing, and will guarantee the County's Seaport Department savings of \$5,474,936 over the next 16 years following the implementation period.

While this contract does not have any SBE requirements, Honeywell has committed to a 20% SBE participation level.

TRACK RECORD/MONITOR

Reinaldo Abrahante, Performance Contracting Program Manager at the Internal Services Department (ISD), Facilities and Utilities Management Division and Gyselle Pino, Division Chief Contracts, Procurement and Materials Management at PortMiami, will monitor and manage the project.

BACKGROUND

JAY Valido - file
Pursuant to Resolution R-228-09, the County is required to reduce electricity consumption by 20% from 2007 levels by 2014; Resolution R-795-12 requires the County to reduce energy density by 20% from 2009 levels by 2020 and the County's Energy Performance Contracting program, managed by the Internal Service Department, provides an effective, cost-efficient and reliable method of implementing energy saving measures.

Pursuant to Resolution R-740-08, the Board approved the establishment of an Energy Performance Contracting Program, allowing the County to use private energy services companies to recommend ways to reduce energy consumption at County facilities and equipment. These projects are performed in a turn-key fashion by the companies, who must guarantee that the projected savings in County utility expenses will meet or exceed all project costs. The program utilizes the pool of ten (10) energy services companies established by State of Florida Contract 973-320-08-01. Additionally, subsection (4)(d) of Section 489.145, Florida Statutes regulates guaranteed energy performance savings

contracting and requires performance savings contractors be selected competitively, in compliance with Section 287.055, Florida Statutes, unless it can be shown that fewer than three firms are qualified to perform the required services.

The Energy Performance Contracting Program is widely utilized across the United States, providing an invaluable tool for local, state, and federal government agencies to identify, finance and perform energy conservation improvements. Florida Statutes allow a maximum 20-year financing plan and provide:

1. An efficient system-wide approach to necessary life-cycle replacement of equipment that results in lower capital and long-term operating and maintenance costs;
2. Projected savings from projects guaranteed to cover all County costs, with the energy services companies (Honeywell International) paying the difference if savings fall short;
3. Reduced financing costs, since projects qualify for tax-exempt municipal lease rates;
4. Consistency of performance from the installation of high-quality parts and equipment under the direction of highly qualified firms with specialized expertise that provide a turnkey service;
5. Faster implementation due to the use of preset vendor pools and a design/build no "change order" project structure;
6. A guarantee by energy services companies contractually and by statute that the equipment procured and installed will achieve the promised energy savings.

On May 8, 2014, the County issued a solicitation for qualification packages from all firms in the Florida State's pool of Energy Service Companies (ESCOs), as authorized by the Board under Resolution R-740-08.

On February 18, 2015 the Internal Services Department notified Honeywell International that it was selected to provide an Investment Grade Audit for Miami-Dade County Seaport facilities. This project will be completed over a 12-month period after the County has obtained the appropriate third-party financing and issued a Notice to Proceed.

The main areas of focus for this project are lighting, water, and Heat/Ventilation/Air Conditioning systems. The multi-step process used to analyze these systems began with gathering facility information, such as original construction documents, which were then supplemented by field observations of the as-installed conditions. This data was input into spreadsheets and computer analysis programs developed to accurately estimate energy consumption and demand. The data was then modified to reflect each proposed energy conservation measure, with the change in energy consumption and demand quantified and applied to current electrical rates to determine the cost savings.

In conjunction with each measure, a specific scope of work was defined. With the scope defined, the cost to implement each measure was developed along with associated project development expenses, including: labor, materials, warranty, savings guarantee, project management, overhead, and engineering fees. The implementation costs were then compared against the annual savings to determine the technical and economic viability of the overall project.

To obtain the third-party financing, Honeywell International solicited quotes from banks to provide the County with the most favorable financing terms and conditions to fund the cost of the energy conservation measures project. Since the County obtains better interest rates than the energy services companies, Honeywell International itself will not finance the project. The County will arrange for the financing directly with a bank. This third-party financing arrangement will be made through a vehicle called a Municipal Lease and all financing costs will be funded from the operating and energy cost

savings that are guaranteed by Honeywell International. The third-party financing costs will be included in the payments made by the County pursuant to the Municipal Lease. This contract with Honeywell can be terminated (be null and void) if the County does not accept the terms of the proposed financing arrangement.

? *Replace and/or repair*
This agreement provides for an efficient system-wide approach that includes necessary life-cycle replacement of capital equipment, resulting in lower long-term operating and maintenance costs, and is guaranteed to be fully repaid from the energy savings. The Port in the near term future would have to upgrade the included projects anyway, regardless if this contract gets approved or not, and would be using a combination of operating and capital funds in lieu of guaranteed energy savings. By approving this contract with Honeywell, the projects would ultimately be funded through the Port's energy savings (guaranteed by Honeywell) without impacting the Port's overall operating or capital budgets. It should also be added that the Board approved similar contracts for the Parks, Recreation, and Open Spaces Department during the February 4th 2014 Board meeting item 8H3 and the Miami Dade Aviation Department (Resolution R-1035-14 and R-1147-09).

WAIVER OF RESOLUTION R-130-06

The Honeywell Contract was signed by Honeywell International on November 2, 2015 but the third-party financing terms have not been finalized. To allow the County to quickly take advantage of quoted rates, this item will also waive Resolution R-130-06, which requires that counterparties to a contract before the Board have signed all proffered contracts.

With respect to the financing of the project, a public hearing by the Board is scheduled for the date of final Board approval for the Resolution in order to comply with the provisions of Section 147(f) of the Internal Revenue Code. The public hearing will be held in accordance with the form of public notice that is on file with the Clerk as Exhibit "A" to the resolution and published in the Miami Herald. This hearing, once concluded, will satisfy the requirements needed for technical compliance with Internal Revenue Service regulations. The not-to-exceed amount of \$5,187,965.00 set forth in the public notice is to fund the costs of the energy savings measures under the Contract and the third-party financing costs.

Jack Osterholt, Deputy Mayor