

Waiver of Competition Justification
Contract Number 4600002700
Project Title: U.S. Department of Homeland Security
Bureau of Customs and Border Protection

A. Introduction/Background

The South Florida Water Management District acquired tract 27T5114, which consisted of 1.40 acres in Palm Beach County, along the S39 Hillsboro Canal. The District entered into a Lease Agreement No. 4600001891 commencing on October 1, 2009, with the U.S. Department of Homeland Security, Bureau of Customs and Border Protection to lease 1.00 acre along the S39 Hillsboro Canal Right-of-Way for the purpose of operating and managing the Premises as a Government radio tower location owned by the LESSOR. The initial lease term was for the period October 1, 2009, to September 30, 2012.

According to the contract specialist representing the lessee, the lessee is requesting a new lease with a three-year lease term in order to keep the total cost of the lease under \$100,000; which is the maximum allowable for their contract signatory authority. The current lease requires an annual rent payment of \$31,827 which brings the three-year total rent paid to the District to \$95,487 which is just under the \$100,000 contract threshold.

The South Florida Water Management District Policies Code, Section 140-10 (1d) allows for a five year renewal of expiring leases for up to a cumulative total of a ten-year period without Governing Board approval. The initial lease term was for a three year period which started in October 1, 2009, with an expiration date of September 30, 2012. While extending the current lease is allowable per District policy; should the District extend the current lease for five years, the total amount of rent collected on that lease contract term would exceed the \$100,000 contract limit. Therefore, the lessee is requesting a new 3-year lease contract.

The new lease contract number is 4600002700.

B. Need for Exception to the Standards for Competition

Pursuant to the District's Policies Code, Section 140-10 (1a) that states that for all new leases: "The District shall conduct a competitive bid process when it determines that it will lease District land and upon termination of an existing lease term unless the Governing Board approves a waiver of competition. The minimum bid shall be the appraised market rent as approved by a District appraiser."

The Bureau of Customs and Border Protection is requesting a new lease and according to the new policy all new leases are put out from competitive bidding. Therefore, a Governing Board approval of a Waiver of Competition is required.

Staff recommends that the Governing Board approves a waiver of competition based on the following reasons:

1. The Bureau of Customs and Border Protection, is a federal law enforcement agency of the United States Department of Homeland Security with whom the District would like to work with cooperatively;
2. The Bureau of Customs and Border Protection depends on this particular radio tower location to effectively continue their mission of protective efforts and to perform their job to the best of their ability;
3. The new rent will be based upon a current appraisal of market rent; and
4. It is unlikely that any individual or entity would participate in a competitive bid process.

The District and the Bureau of Customs and Border Protection would like to enter into a new lease agreement to continue their mission and protective efforts. The continued revenue from the lease is advantageous to the District. Therefore; staff recommends an approval of the waiver of the competitive bid process for this lease.

C. Preserving Fairness in the Method of Selection

Though the District's normal selection method is not being exercised, the circumstances described in Section B. above do provide fairness. The Lease represents a unique circumstance due to the responsibility of this Government agency. The Lease has only been in place for three years. There does not appear to be any evidence that the District has been or will be unfair to any third parties.

D. Preserving Competitive Pricing in the Method of Selection

To establish the lease rate for the subject amendment to the Lease, an appraisal of the current market value lease rate is in process. Based on the acres owned by the District, the District's pro rata share of the annual lease payment for the extension period of October 1, 2012 through October 1, 2015, will be equal to the current market value.

E. Conclusion/Summary

The parties desire to extend the Lease for three years from October 1, 2012, through October 1, 2015. The lease provides generous revenue for the District. Staff recommends approval of the Waiver of Competition.