

29272



Joe Lauro, CPPO/CPPB
Director

INTEROFFICE MEMO

To: Robert S. LaSala, County Administrator
From: Joseph Lauro, Director of Purchasing *Joe Lauro*
Subject: Approval of Final Negotiated Contract – Support Services and Maintenance,
Hewlett-Packard (HP) and IBM Equipment
Contract No. 089-0069-P(RM)
Date: March 30, 2009

RECOMMENDATION: I RECOMMEND THE COUNTY ADMINISTRATOR APPROVE THE FINAL NEGOTIATED CONTRACT FOR HP AND IBM EQUIPMENT SUPPORT SERVICES AND MAINTENANCE WITH SMS SYSTEMS MAINTENANCE SERVICES, INC. (SMS), MULBERRY, FLORIDA.

IT IS FURTHER RECOMMENDED THAT THE COUNTY ADMINISTRATOR SIGN THE AGREEMENT.

ESTIMATED ANNUAL EXPENDITURE NOT TO EXCEED: \$200,000.00

Funding is provided through Business Technology Services (BTS) operating budget.

DISCUSSION: On January 30, 2009, the County Administrator approved the ranking of firms for support and on-site repair and maintenance services for Pinellas County's (County) enterprise-wide computing equipment supported by BTS. There are multiple server platforms that will be covered under the agreement, including Dell, HP and IBM systems.

The proposal cost submitted by SMS was \$127,000.00 for Sixty (60) months fixed pricing to cover the annual maintenance and support services for equipment presently owned by the County and for any added or new equipment acquired during the contract term that are within Dell, HP and IBM's server families.

The total estimated annual expenditure also includes negotiated costs for supplementary professional services and materials offered by SMS in their proposal and consist of the following:

- A fixed fee of \$200 per hour, inclusive of all labor, travel costs and any other out of pocket expenses, portal to portal, for the term of the contract, for other work including:
 1. Pre-configured services
 2. Custom-configured services
 3. Relocation/Equipment Relocation and Move services
 4. Decommissioning, Removal and Destruction services for IT assets
 5. Parts provided at Cost, Plus 20% or MSRP less 10%, whichever is less.
This approach is best since many of the County systems are considered "End of Sale Life"; thus MSRP may be significantly higher than true market value of such parts.

As value added services, included in the cost for the annual maintenance and support program, SMS will also provide the County with:

1. Engineering Labor Credits that can be used for other services not included in the contract, i.e., new installs and/or decommissioning of equipment, equipment moves and deployment assistance.
2. Fix-It-First Policy – any equipment will be fixed even if not part of the listed inventory.
3. Annual Onsite Equipment Audit Services.
4. Customized Service Levels – single point of contact for all support services including those provided by manufacturer.

The contract contains provisions for One (1) Sixty (60) month term extension allowing for price adjustment (increase or decrease) in an amount not to exceed the U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Table 5 Compensation Not Seasonally Adjusted: Professional Scientific and Technical Services.

Other county agencies were invited to participate in the RFP through BTS, but due to current contractual obligations, had to decline. BTS plans to provide the details of the contract to these agencies so they can begin looking at the advantages of consolidating these types of services.

Section 2-176 of the Pinellas County Code delegates to the County Administrator to award negotiation contracts for purchases of goods or services of \$250,000 or less, and the Director of Purchasing \$100,000 or less within the budget of the using department

APPROVED: 
ROBERT S. LASALA
County Administrator

Date of Approval: 04-01-09

Attachments:

1. Agreement
2. Negotiation Letter
 - SMS Standard Terms and Conditions

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AGREEMENT

THIS AGREEMENT, made and entered into this 2 day of April, 2009, by and between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "County" and SMS Systems Maintenance Services, Inc., Mulberry, FL, hereinafter referred to as the "Contractor".

WITNESSETH:

WHEREAS, County has previously determined that it has a need for COMPUTER SUPPORT SERVICES AND MAINTENANCE; and

WHEREAS, County, after soliciting competitive proposals for such services pursuant to Pinellas County Request for Proposal, RFP No. 089-0069-P (hereinafter Request for Proposal or RFP), County has awarded this contract to Contractor; and

WHEREAS, Contractor has represented that it is able to satisfactorily provide the services according to the terms and conditions of the Request for Proposal, which are incorporated herein by reference, and the terms and conditions contained herein; and

NOW THEREFORE, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. Services to be Performed. The Contractor hereby agrees to provide the County with COMPUTER SUPPORT SERVICES AND MAINTENANCE, as requested and more specifically outlined in the Request for Proposal, this Agreement and all subsequent official documents that form the Contract Documents for this Agreement.

2. Term of Agreement/Term Extension. Services performed pursuant to this Agreement shall commence upon execution of this Agreement and continue for a period of sixty (60) months, unless canceled or terminated as provided herein. The Contract may be extended subject to written notice of agreement from the County and successful bidder, for an additional sixty (60) month(s) period beyond the primary contract period. The extension shall be exercised only if all prices, terms and conditions remain the same and approval is granted by the County Administrator or Director of Purchasing.

3. Amendment of the Agreement. This Agreement may be amended only by mutual written agreement of the parties.

4. Assignment/Subcontracting. The Contractor shall provide the Services required by this Agreement. No assignment or subcontracting shall be allowed without the prior written consent of the County. In the event of a corporate acquisition and/or merger, the Contractor shall provide written notice to the County within thirty (30) business days of Contractor's notice of such action or upon the occurrence of said action, whichever occurs first. In that event, the County may terminate this Agreement in those instances in which a corporate acquisition and/or merger represents a conflict of interest or contrary to any local, state or federal laws.

5. Termination. Pinellas County reserves the right to terminate this Agreement, without cause, by giving thirty (30) days prior written notice to the Contractor of the intention to terminate.

Failure of the Contractor to comply with any of the provisions of this Agreement shall be considered a material breach of the Agreement and shall be cause for immediate termination of the Agreement at the sole discretion of Pinellas County.

In addition to all other legal remedies available to County, County reserves the right to terminate and obtain from another source any services which have not been provided within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time from the date of order or request, as determined by County.

In the event that sufficient budgeted funds are not available for a new fiscal period, the County shall notify the Contractor of such occurrence and the Agreement shall terminate on the last day of the then current fiscal period without penalty or expense to the County.

6. Compensation. County shall pay Contractor upon Contractor's completion of, and County's acceptance of, the services required herein, as specified in the Request for Proposal. Prices shall remain firm for the duration of the Agreement. All payments shall be made in accordance with the Local Government Prompt Payment Act, Fla. Stat. § 218.70, et. seq. Contract extensions will allow for price adjustment (increase or decrease) in an amount not to exceed the U.S. Bureau of Labor Statistics Employment Cost Index (ECI) Table 5 Compensation Not Seasonally Adjusted: Professional Scientific and Technical Services.

7. Permits/ Licenses. Contractor must secure and maintain any and all permits and licenses required to complete this Agreement.

8. Audit. The Contractor shall retain all records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, Pinellas County reserves the right to audit such records pursuant to Pinellas County Code, Section 2-176(j).

9. Minimum Insurance Requirements. The Contractor must maintain insurance in at least the amounts required in the Request for Proposal throughout the term of this contract. The Contractor must provide a Certificate of Insurance in accordance with Insurance Requirements, Section C of the Request for Proposal, evidencing such coverage prior to issuance of a purchase order or commencement of any work under this Agreement. Contractor shall ensure that any subcontractors or persons hired by subcontractors maintain the same level of insurance coverage as the Contractor.

10. Indemnification. Contractor shall indemnify, pay the cost of defense, including attorneys' fees, and hold harmless the County from all suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons or property by or from the said Contractor; or by, or in consequence of any neglect in safeguarding the work; or by the use of unacceptable materials in the construction of improvements; or by or on account of any act or omission, neglect or misconduct of the said Contractor; or by, or on account of, any claim or amounts recovered under the "Workers' Compensation Law" or of any other laws, by-laws, ordinance, order or decree, except only such injury or damage as shall have been occasioned by the sole negligence of the County. The first ten dollars (\$10.00) of compensation received by the Contractor represents specific consideration for this indemnification obligation.

12. Governing Law. The laws of the State of Florida shall govern this Agreement.

13. Independent Contractor Status and Compliance with the Immigration Reform and Control Act of 1986. The Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et. seq., and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the Agreement, at the discretion of Pinellas County.

14. Severability. The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

15. Documents Comprising Agreement. The Agreement for COMPUTER SUPPORT SERVICES AND MAINTENANCE, as well as the following documents, which are incorporated herein by reference.

- a. Pinellas County's Request for Proposal and all of its addenda and attachments issued on 11/21, 12/15, 12/12, 12/19, 2009;
- b. Negotiation Letter dated March 11, 2009; and
- c. SMS Standard Terms and Conditions revised March 16, 2009; and
- d. Contractor's Certificate of Insurance required under Section C of the Request for Proposal; and
- e. Contractor's Proposal.

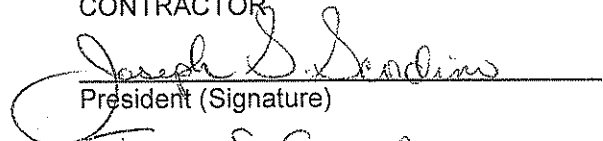
If there is a conflict between the terms of this Agreement and the above referenced documents, then the conflict shall be resolved as follows: the terms of this Agreement shall prevail over the other documents, and the terms of the remaining documents shall be given preference in their above listed order.

IN WITNESS WHEREOF the parties herein have executed this Agreement for COMPUTER SUPPORT SERVICES AND MAINTENANCE pursuant to RFP No. 089-0069-P as of the day and year first written above.

PINELLAS COUNTY, FLORIDA
by and through its County Administrator


County Administrator

CONTRACTOR

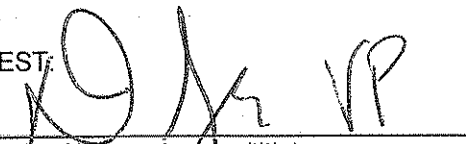

President (Signature)
Joseph S. Scordino
President (Printed Name)

ATTEST:

By: 
(Attesting Witness' name/title)

[Corporate Seal]

ATTEST:

By:  VP
(Attesting Witness' name/title)

APPROVED AS TO FORM:


Office of the County Attorney

BOARD OF COUNTY COMMISSIONERS

NANCY BOSTOCK
NEIL BRICKFIELD
CALVIN D. HARRIS
SUSAN LATVALA
JOHN MORRONI
KAREN WILLIAMS SEEL
KENNETH T. WELCH



Joseph Lauro, CPPO/CPPB
Director

March 4, 2009 – Revised March 9, 2009 – See Question # 10 – last paragraph

Ms. Therese M. Williams, Florida Region General Manager
Systems Maintenance Services (SMS)
5925 Imperial Parkway Ste 126
Mulberry, FL 33860

Via: Email: twilliams@sysmaint.com

RE: Negotiation of Contract
Request for Proposal(RFP) – Support Services and Maintenance – HP and IBM Equipment
Contract No: 089-0086-P(RM)

Dear Ms. Williams:

This letter is to confirm that SMS agrees to the following negotiation points and they will become part of this contract and/or Service Level Agreement (SLA) with SMS.

1. SMS agrees that they will provide all annual maintenance services to include equipment presently owned by the County as listed in Appendices A and B of the RFP, as well, as new equipment acquired during the contract term that is on the SMS Support List, and within Dell's, Hewlett-Packard (HP) and IBM's server families.
2. SMS agrees that the contract term is for sixty (60) months from the date of full execution of the SLA.
3. SMS agrees that the pricing submitted in its proposal for the annual maintenance services will remain fixed for the term of the contract.
4. SMS agrees that all annual maintenance fees for services as submitted in response to this RFP is inclusive of all labor, travel and other expenses associated in fulfilling the scope of work requirement.
5. SMS agrees that during the term of the contract, the County may add or delete equipment upon a ten (10) day advance notice in writing from the County to SMS.
6. SMS agrees it will prorate the fees for any added or deleted equipment according to the percentage of the month services is provided.
7. SMS agrees to provide a fixed fee of \$200 per hour, inclusive of all labor and travel costs, portal to portal, for all equipment maintenance and professional service work performed by SMS outside the scope of the contract, and for the term of the contract.

PLEASE ADDRESS REPLY TO:
400 South Ft. Harrison, Sixth Floor
Clearwater, Florida 33756
Phone: (727) 464-3311
FAX: (727) 464-3925
Website: www.pinellascounty.org/purchase

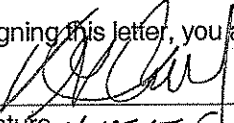
8. SMS agrees to provide the County with the option on part costs as follows:

Any parts supplied as part of a non-contracted service will be charged as either SMS Cost, Plus 20% OR MSRP less 10% -- whichever is less, during the term of the contract. The County opts for this approach since many County systems are considered "End of Sale Life"; and thus MSRP may represent a significantly higher cost than true market value of such parts. If "SMS's Cost Plus 20%" is less than "MSRP with discount", then the lower cost will apply. SMS will provide the County with cost sheets to verify the lowest price is being applied.

9. SMS agrees that freight terms for all parts that are not covered under the scope of the contract will be FOB destination, freight pre-paid and charged back at actual cost, during the term of the contract.
10. SMS agrees the following Value Add Services are included as part of this contract at no additional costs:
- Engineering Labor Credits – County will accrue 4 labor credit hours per month, not to exceed 12 hours. These hours can be used to retain SMS services experts for predetermined projects at the County such as to leverage repair work on a "Fix it First" basis, or equipment moves, deployment assistance, equipment installations, and/or decommissioning services. Off hours are absorbed a 1.5 credits per hour.
 - Fix-It-First Policy - Equipment will be serviced and then added to the contract with prior approval from the County.
 - Single Point - SMS agrees that the County will have access to SMS's Single Point tool within the first 4-6 weeks of the contract start date. Any updates or new releases to Single Point will be provided to the County at no additional costs during the term of the contract.
 - Site Audit Services – Onsite equipment audit at least once a year.
 - Customized Service Levels Supported Across the Data Center – SMS will be the single point of contact regardless of whether maintenance is from SMS or from the Manufacturer. The County wants a single point of contact with only one number to call. The County will provide the asset serial numbers for items still remaining on warranty.
11. SMS will provide call home for the 2086, 2105, and 3494 library. SMS will work with County IT personnel to change the call home number in the HMC, ESS Net Console, and 3494 Master Console for Service from IBM's call home number to the SMS call home number.
12. SMS will have access to IBM Retain to access to the latest patches and Engineering Code (EC) changes as they are developed by IBM. IBM's process allows the HMC to call out once per week to download new patches. Rather than providing this automated patch process, SMS engineer(s) will arrive on-site with the official DVD that has the patches, and load those onto the HMC.
13. Within the scope of this contract, SMS will assist the County BTS Personnel with selecting or rejecting various IBM SWMA products and options. Our goal is to ensure that all machines have proper coverage between SMS and IBM SWMA Services, while minimizing the cost to the County.
14. SMS will verify that the equipment is in working condition during the site audit visit. If any of the systems are faulty or not up to operational standards, then SMS may request T&M to repair the system for the County for continued coverage. There is no "certification" fees associated with SMS accepting coverage on non-warranty or non-covered OEM equipment.
15. SMS will service re-furnished equipment in the same manner as new equipment. SMS will provide a "testing/verification" service to the County to ensure that any refurbished equipment received is tested by SMS, including firmware updates, BEFORE installed into County's systems.
16. SMS agrees they will perform an onsite audit for all systems requiring coverage regardless of their location. SMS engineers will visit each site to ensure the equipment matches the inventory list and to ensure their local sparing pool for the County's systems. SMS will gather details on any systems not captured by the RFP inventory and present that information back to the County. From there, the County can choose to either add those systems to the contract, or simply keep them on T&M coverage.

17. Per the SMS Standard Terms and Conditions included in the proposal submittal #8:
Termination/Penalty Clause. The County requests SMS to agree to the County's standard Cancellation conditions as defined in the RFP on page 6, Section A – General Conditions # 23.

By signing this letter, you agree to the negotiations points listed above.

	<i>EXECUTIVE VICE PRESIDENT</i>	<i>3/11/09</i>
Signature <i>VINCENT G. CAVELL</i>	Title	Date

Please fax a signed copy of this agreement letter to my attention to (727) 464-3925 no later than March 6, 2009 and forward a signed original to my attention to the address listed on the first page.

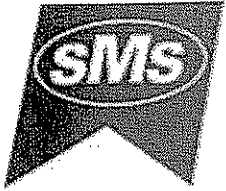
Upon receipt of the letter we will proceed with preparation of the services agreements.

Please contact me with any questions.

Sincerely,

Ruby M. McKenzie, CPPB
Procurement Analyst

Cc: Ed Lachman
Bruce Rader



STANDARD TERMS AND CONDITIONS – Revised 03-16-09

1. TERM

This Agreement is effective from the Initial Term Start Date on the front of this Agreement and shall continue for the initial term of one year unless a different initial term is specified on the front of this Agreement. Following expiration of the initial term, this Agreement shall remain in force until terminated by either party upon sixty (60) days written notice. Partial additions and/or deletions may be made within this agreement, but must be in writing and requires a fourteen (14) day notice prior to taking effect, in order to reflect changes on the next billing cycle (usually monthly) contract amount.

2. EQUIPMENT TO BE SERVICED

- a. To be eligible for service under this Agreement, all equipment listed above must have recently been under warranty from the manufacturer or must have recently been covered under another maintenance agreement. This section has been changed to include the terms of the Negotiation Letter revised March 9, 2009, #1.
- b. All equipment covered must meet the manufacturers' minimum equipment configuration requirements and specifications.

3. SERVICE RESPONSIBILITIES OF SMS

- a. SMS shall, for the charges stated in this Agreement, maintain the equipment in good operating condition and furnish scheduled preventive maintenance based on the needs of the equipment and of User/Customer during the time period for performance excluding locally observed holidays unless otherwise stated.
- b. The type of service is as specified within the Agreement. Examples of standard coverage options are:
 - Monday through Friday 8AM to 5:00 PM, 8 hour onsite
 - Monday through Friday 8AM to 5:00 PM, 4 hour onsite
 - Extended: Up to 7 x 24, 4 hour onsite
 - Telephone Support: 7 x 24, 1 hour call back response
- c. Services required to be initiated beyond service hours contracted for will be billed at SMS' per call rates and terms then in effect.
- d. Maintenance will include labor and replacement of all parts deemed necessary for proper operation of equipment covered under this Agreement. Replaced parts shall become the property of SMS.

4. RESPONSIBILITIES OF USER/CUSTOMER

- a. User/Customer shall notify SMS immediately of equipment failure, and shall allow SMS staff full and free access to the equipment and use of necessary equipment, machines and devices in the User/Customer's possession.
- b. User/Customer shall maintain accurate and current logs and records concerning the operation of the equipment.
- c. User/Customer shall not move or cause to have moved the equipment covered under this

Agreement without prior notification to SMS. At the request of the User/Customer, SMS will move equipment at per call rates and terms then in effect (PCs and small printer excepted). User/Customer has the option of requesting that any faulty disk drive that is replaced by SMS may remain property of User/Customer.

- d. SMS will utilize a single point of contact, the Customer Service Center (CSC) at 727-453-HELP (727-453-4357) for reporting automated "phone home" processes and other incidents that SMS is aware before BTS. BTS will utilize its ITIL processes for problem/incident reporting, configuration management and change control.

5. SERVICES LIMITATIONS

- a. Maintenance services required, in the opinion of SMS, because of problems external to the equipment or due to causes other than normal wear and tear, are not covered under this Agreement. If performed, such services will be billed at SMS' per call rates and terms then in effect.
- b. Maintenance service does not include operating supplies, consumable items (such as UPS batteries, laser maintenance kits, printer bands, etc.), or electrical work external to the equipment.

6. LIMITATIONS OF MAINTENANCE REMEDY

- a. SMS service liability under this Agreement shall be limited to restoring the equipment covered under this Agreement to good and operating condition, except as provided by Clause 5.
- b. SMS makes no warranties expressed or implied regarding the use, operation, or fitness for intended use of the equipment.
- c. During the period of this Agreement, only authorized SMS staff shall service the equipment covered under this Agreement. Should the equipment be serviced by persons other than SMS staff, SMS shall no longer be held liable for maintenance services described herein.
- d. BTS can reduce the likelihood of incurring charges by simply informing SMS of any changes being made and by making sure proper procedures are followed. SMS engineers will review best practices and procedures with BTS and support a mutually agreeable repair process.
- e. SMS does recognize that there are incidents that will include BTS performing some hardware work to help reduce outage times, such as disk replacements, power supplies, etc. If BTS opts to "open the system cover" and exchange internal components, resulting in damages to the equipment, then SMS may require reimbursement for the repair work based on the time and materials rates agreed upon in this RFP. However, SMS will not void the SLA.

7. GENERAL CONDITIONS

- a. The User/Customer agrees that SMS shall not be liable for any special, indirect or consequential damages or loss due to operator error, software problems, use of equipment not covered under this Agreement, or improper use of equipment.
- b. Changes to this Agreement will not be valid unless in writing and signed by both parties.
- c. Any dispute arising out of relating to this Agreement shall be subject to and governed in all respects by the laws of the state of Florida. Jurisdiction and venue with respect to lawsuits arising out of or relating to this Agreement shall reside in the courts of Pinellas County, Florida.

8. TERMINATION / PENALTY CLAUSE

- a. The User/Customer may terminate this agreement with a 30 day written notice at anytime during the term of the agreement should SMS not perform maintenance services per this agreement and within the defined coverage terms. Upon such cancellation, SMS will refund User/Customer the balance of prepaid monthly maintenance remaining on the contract term.

b. The User/Customer may request reimbursement of one month's maintenance fees for failure to deliver within the noted response times for the device/item impacted by the outage. This request should be provided as a written notice to SMS within 30 days of the incident occurrence.

c. Pinellas County reserves the right to cancel this contract without cause by giving thirty (30) days prior notice to the contractor in writing of the intention to cancel or with cause if at any time the contractor fails to fulfill or abide by any of the terms or conditions specified.

Failure of the contractor to comply with any of the provisions of this contract shall be considered a material breach of contract and shall be cause for immediate termination of the contract at the discretion of Pinellas County.

In addition to all other legal remedies available to Pinellas County, Pinellas County reserves the right to cancel and obtain from another source, any items/services which have not been delivered within the period of time stated in proposal, or if no such time is stated, within a reasonable period of time from the date of order as determined by Pinellas County.

In the event sufficient budgeted funds are not available for a new fiscal period, the County shall notify the vendor of such occurrence and contract shall terminate on the last day of current fiscal period without penalty or expense to the County.

9. SLA PERIODIC REVIEWS

- a. Initial Review of this SLA will be 6 months from the Initial Term Start Date. This 6 month period will be used to gather baseline measurements and refine processes.
- b. Upon approval of change (if any) resulting from the initial review, the SLA will then be reviewed on an annual basis from the new approved date. Only the SLA review date will change. The SLA initial term date remains fixed.
- c. Any parts represented in this SLA may request a review at any time prior to the scheduled reviews.
- d. The SMS Representative is responsible for facilitating regular reviews of this document. Content of this document may be amended as required upon approval.