

**City of Coral Springs
City Commission Meeting Agenda Item**

Meeting: January 15, 2014
Department: Financial Services
Initiated By: Angelo Salomone

Summary Sheet

DOC ID: 3774

SUBJECT: Unleaded Gasoline & Diesel Fuel

**REQUESTED ACTION:
(INCLUDE CONTRACT
START/TERM DATES)** Request to amend the Memorandum of Understanding for Unleaded Gasoline and Diesel Fuel through the Southeast Florida Governmental Purchasing Cooperative Group, RFP #09-A-149 to **Port Consolidated, Inc.** of Ft. Lauderdale, Florida, beginning January 16, 2014 and terminating on June 30, 2014. The estimated annual expenditure for the City of Coral Springs under this contract is approximately \$1,298,427.00 for diesel fuel and unleaded gasoline. (REQUEST TO AMEND)

**PROJECT REVIEWED BY
OR INCLUDED IN:**

ATTACHMENTS: #1 – Third Amendment to Memorandum of Understanding
#2 – Current / Modified Pricing Information
#3 – Excerpt from Memorandum of Understanding
#4 – Excerpt from RFP pertaining to Substitute/Alternate Method for Price Adjustment

BACKGROUND / DESCRIPTION:

BACKGROUND:

1. Using Department(s): City-Wide
2. Justification for Award Recommendation:
 Most responsive and responsible Bidder
 Highest ranked Proposer
 Other _____
3. Is this item in the adopted budget? Yes No
4. Is this item in the CIP? Yes No
5. Agreement Info: Contract executed by Firm
 N/A
6. Insurance: Approved
 N/A

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7. Additional information:

The City of Coral Springs, acting as lead agency for the purchase of Diesel Fuel and Unleaded Gasoline for the Southeast Florida Governmental Purchasing Cooperative Group has solicited proposals for this necessary commodity. This procurement combines the estimated usage of the 28 agencies that chose to participate in this procurement. **It is estimated that the value of this contract will exceed \$60 million annually, judged by today's prices and estimated usage.**

Since the contract renewal on December 4, 2013, the following issues have arisen:

- The cost of transporting fuel to Port Everglades has risen dramatically.
- Our supplier, Port Consolidated, has requested a modification to the contract in order to maintain the provision of fuel to the Co-Op participants.
- The recommended modifications result in a net increase in the six month contract period of approximately \$120,000 for the total \$60 million contract value, based on historical fuel usage. This is less than ¼ of 1% of the contract value.
- With the exception of Co-Op agencies with large bus fleets, most Co-Op agencies use more gasoline than diesel fuel and will see a net decrease in fuel costs over the next six months.

Coral Springs purchases more gasoline than diesel fuel, as do many agencies, and will not see a cost impact due to these changes.

A situation has been brought to our attention from our fuel supplier, Port Consolidated, regarding the marketplace for unleaded gasoline and diesel fuel in the area serviced by Port Everglades. A shortage of vessels to transport gasoline and diesel fuel from the United States Gulf Coast region to Port Everglades has caused an increase in the transportation fees that Port Consolidated pays when they buy fuel from their suppliers. This rise in transportation cost is not reflected in the index that we use to determine the daily prices, the Platts Index, but is an element of the transport delivery differential that was proposed at the time of the initial award of the contract. Please see the attached pricing page. The majority of the difficulty is in the cost that our supplier currently is paying for diesel fuel. The shortage of barges that deliver fuel to Port Everglades has caused some additional fuel deliveries that originate in Europe and New York harbor to arrive in Port Everglades, but these are opportunities for supply that Port Consolidated would typically buy from the spot market, not under an ongoing contract from a supplier such as Chevron or Marathon.

The increase in the cost of transporting fuel from the Gulf Coast to Port Everglades was confirmed by the Petroleum Specialists at Port Everglades. These numbers have shown steady increases for more than a years' time. Also by way of verification, the same conditions and difficulties are being experienced with the supplier that sells to Metro Dade County. These suppliers are experiencing and are reporting the same additional cost pressures in the marketplace.

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The Memorandum of Understanding which outlines the agreement between the cooperative and Port Consolidated includes the Request for Proposals as a fully incorporated element of that document. In the Request for Proposals, Attachment "A", Specifications and Requirements, Paragraph 4, entitled "Substitute/Alternate Method for Price Adjustment", states the following:

- 4.1 The City reserves the right, based on mutual agreement with the successful proposer to substitute an alternative method for price adjustment if:
- c) The use of the Platts Gulf Coast Water Borne Mean prices or New York Harbor computation becomes non-representative of the market.

The underpinnings of the Platts Index Gulf Coast pricing has been disrupted due to changes in the cost of transporting the fuel from that region to Port Everglades.

As the timely provision of fuel is a critical element of our operations, it is in the best interest of the agencies cooperating on this procurement to utilize the price adjustment clause that was established in the Request for Proposals. The recommended modification to the Memorandum of Understanding with Port Consolidated achieves the following:

- Keeps the supply of fuel secure
- Establishes a situation where the supplier is selling fuel to the Cooperative at levels which meet his costs and overhead, but with minimal or no profit

This solution will be in place from January 16, 2014 to June 30, 2014, in order to provide enough time for a new Request for Proposals to be issued and for a new contract, most likely with modified pricing methodology, to be awarded.

Port Consolidated understands the necessity of continuing to provide fuel to the Cooperative. They have offered the following changes to the pricing methodology through June 2014, in order to meet our needs and maintain their status as a supplier in good standing with the Cooperative:

- Increase the differential on Ultra Low Sulfur Diesel by .055 per gallon
- Decrease the differential on Regular Unleaded 87 Octane by .055 per gallon
- As a price back stop, the Co-Op, on a daily basis, will receive either the above listed Platts Index + differential cost or the OPIS Unbranded Average Miami Rack Rate plus \$0.01, whichever is lowest

As you can see, the increase would be in the cost of diesel to the Cooperative, and would be partially offset with reductions to the cost of unleaded gasoline. In addition, the

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Cooperative is protected in the new pricing mechanism by the agreement that, under no circumstances, would we pay more than the OPIS Index Average Rack Rate for Port Everglades, (which is a wholesale price) plus \$0.01.

This modification is within the bounds of the existing agreement and is a fair and reasonable adaptation to changes in the marketplace in general that are affecting more than our Cooperative Contract.

COPIES TO: T. Planco, Central Stores Coordinator
S. Harbin, Fleet Services Superintendent
S. Grant, Deputy City Manager
M. Heller, Director of Financial Services
S. Whitacre, Deputy City Attorney
J. Hearn, City Attorney

**THIRD AMENDMENT TO MEMORANDUM OF UNDERSTANDING
BETWEEN SOUTHEAST FLORIDA GOVERNMENTAL PURCHASING
COOPERATIVE AND PORT CONSOLIDATED, INC.**

This Third Amendment to Memorandum of Understanding (the "Third Amendment") is entered into this 6th day of January 2014, by and between Southeast Florida Governmental Purchasing Cooperative and Port Consolidated, Inc.

RECITALS

WHEREAS, the parties entered into a Memorandum of Understanding dated November 13, 2009 (the "MOU") related to the provision of unleaded gasoline and diesel fuel; and

WHEREAS, under Section 5 of the MOU, the initial contract term is January 1, 2010 through March 31, 2012 with two (2) additional two (2) year renewals available; and

WHEREAS, on January 10, 2012, the MOU was renewed for an additional two (2) year time period through March 31, 2014; and

WHEREAS, on December 4, 2013, the MOU was renewed for an additional two (2) year time period through March 31, 2016; and

WHEREAS the parties have agreed to a modification to the pricing methodology due to regional fuel marketplace issues and also agree to modify the term of the memorandum to June 30, 2014.

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

1. The term of the MOU between the parties shall be amended to June 30, 2014, with no renewals available.
2. Exhibit "A" of the MOU provides pricing for the products. Beginning January 16, 2014, the delivery differential price schedule as provided as part of Exhibit "A" to the MOU will be modified as per Attachment 1 to this Third Amendment entitled "Modified Pricing".
3. All terms, provisions and conditions of the MOU not inconsistent with this Third Amendment shall remain in full force and effect.
4. Should any part, term or provision of this Third Amendment be by the courts decided to be illegal or in conflict with any law of the State, the validity of the remaining portions or provisions shall not be affected thereby.
5. This Third Amendment shall be effective upon the approval of the City Commission.

FOR CONTRACTOR

BY: *Donald R. Carlton Jr.*

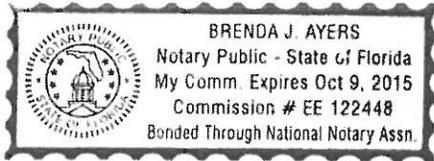
PRINT NAME: Donald R. Carlton Jr.

TITLE: President

On this, the 6 day of JANUARY, 2014, before me, the undersigned Notary Public of the State of FLORIDA, the foregoing instrument was acknowledged by DONALD R. CARLTON (name), PRESIDENT (title) PORT CONSOLIDATED, INC., a FLORIDA (state of corporation) corporation on behalf of the corporation.

WITNESS my hand
and official seal

Brenda J. Ayers
Notary Public State of FLORIDA



Printed, typed, or stamped name
of Notary Public exactly as commissioned

Personally known to me, or
 Produced identification:

(Type of identification produced)

Attachment 1

MODIFIED PRICING:

Item No.	Description	Transport Delivery Differential Proposed per gallon	Tankwagon Delivery Differential Proposed per gallon
1	Regular Unleaded 87 Octane	\$ + .0525	\$ + .0725
2	Ethanol	\$ + .2390	\$ + .2590
3	Diesel Fuel #2 Ultra Low Sulfur	\$ + .14	\$ + .16
4	Midrange Unleaded 89 Octane	\$ + .1029	\$ + .1229
5	Ultra Low Sulfur #2 Red Dye Diesel	\$ + .24	\$ + .44
6	Lump Sum Additional Delivery Charge for Deliveries <u>beyond</u> 30 mile radius of Port Everglades only	No Charge	No Charge

Note 1: On a daily basis, a comparison would be made for both unleaded gasoline and ultra low sulfur diesel between the Platts Index plus the transportation differential and the OPIS unbranded average Miami rate plus \$0.01. Port Consolidated will provide the daily pricing to the Co-Op participating agencies on the lower of the two prices.

Note 2: Port Consolidated will provide any participating Co-Op Agency a \$.02 per gallon discount for any/all product that is loaded directly from their suppliers in Port Everglades (F.O.B. Port Everglades). Any Participating Co-Op Agency wishing to take advantage of this discount must sign-up with Port Consolidated no later than (30) days prior to pulling product to ensure all necessary paperwork and procedures are in place.

CURRENT PRICING:

5. Port Consolidated will invoice fuel to participating Co-Op Agencies via the following delivery differential price schedule:

Item No.	Description	Transport Delivery Differential Proposed per gallon	Tankwagon Delivery Differential Proposed per gallon
1	Regular Unleaded 87 Octane	\$ + .1075	\$ + .1275
2	Ethanol	\$ + .2390	\$ + .2590
3	Diesel Fuel #2 Ultra Low Sulfur	\$ + .0850	\$ + .1050
4	Midrange Unleaded 89 Octane	\$ + .1579	\$ + .1779
5	Ultra Low Sulfur #2 Red Dye Diesel	\$ + .1850	\$ + .3850
6	Lump Sum Additional Delivery Charge for Deliveries <u>beyond</u> 30 mile radius of Port Everglades only.	No Charge	No Charge

Note: Port Consolidated will provide any participating Co-Op Agency a \$.02 per gallon discount for any/all product that is loaded directly from their suppliers in Port Everglades (F.O.B. Port Everglades). Any Participating Co-Op Agency wishing to take advantage of this discount must sign-up with Port Consolidated no later than (30) days prior to pulling product to ensure all necessary paperwork and procedures are in place.

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MEMORANDUM OF UNDERSTANDING

Between

Southeast Florida Governmental Purchasing Cooperative

And

Port Consolidated, Inc.
3141 S.E. 14 Ave.
Ft. Lauderdale, FL 33335

This Memorandum of Understanding is made by Port Consolidated, Inc. (hereinafter "Contractor").

The purpose of this Memorandum of Understanding is to document the covenants, provisions, terms, promises and conditions related to the provision of unleaded gasoline and diesel fuel to the Southeast Florida Governmental Purchasing Cooperative Group (hereinafter "Cooperative") by Contractor. In conjunction with Request for Proposal 09-A-149, dated September 8, 2009, as incorporated fully herein, and Contractor's Proposal dated September 16, 2009 and Best and Final Offer, dated October 29, 2009 ("Proposal"), as incorporated fully herein, Contractor confirms and agrees as follows:

1. SCOPE OF SERVICES:

1.1 Contractor will sell to all participating agencies the following products (the "Products"):

- "Ultra Low Sulfur diesel": No. 2 Ultra Low Sulfur, on-road, clear, taxable diesel fuel per ASTM D975-08a specifications, or latest revision.
- "Ethanol Gasoline": 10% Ethanol blended gasoline per ASTM D4814-07b specifications, or latest revision.

1.2 Additional, Optional Fuel Products:

- Midrange Unleaded Gasoline: Minimum Octane of 89.0
- Ultra Low Sulfur #2 Red Dye Diesel

of the contract or any renewal periods. No other charges shall be added. Differential must be expressed in dollars and/or cents per gallon.

- 2.5 The selected proposer shall advise the Lead Agency of all available Federal or State credits and discounts available on all fuel types being purchased herein. The selected proposer shall apply all applicable credits and discounts to the price charged to the Co-Op and identify and reflect the discount on the applicable invoices. (Note: the applicable credits and discounts will be incorporated after award and shall not be reflected in the Price proposal Schedule.)

2.6 Alternative Fuels

Considering the dynamic nature of fuel technology and the growing demand for alternative fuels, the Co-Op reserves the right to add any alternative fuel to the fuel types required. When such a need arises, the Co-Op shall contact the selected Proposer to determine if the selected proposer has the ability to provide or obtain the alternative fuel. The Co-Op shall provide the selected Proposer with information on the fuel type, the technical specifications of the fuel, the acceptable operating parameters, the estimated quantities, delivery requirements, and any other relevant information available. The selected proposer shall submit a written price offer for the supply of the alternative fuel for the Co-Op's review and approval.

However, if the selected proposer is unable to supply the alternative fuel type, or the Co-Op does not accept the selected proposer's price offer, the Co-Op shall have the right to purchase the alternative fuel elsewhere.

3. TAXES:

- 3.1 The agencies listed herein are counties, municipalities or subdivisions of the State of Florida and are exempt from Federal Gasoline and Diesel (excise) Road taxes and Florida Sales Tax.
- 3.2 Proposals will be considered only from Proposers who do not require the payment of these taxes.

4. SUBSTITUTE/ALTERNATE METHOD FOR PRICE ADJUSTMENT:

- 4.1 The City reserves the right, based on mutual agreement with the successful proposer, to substitute an alternate method for price adjustment if:
- A. An interruption in the Platts publication is experienced beyond existing scheduled holidays (Independence Day, Christmas, etc.), or
 - B. The listing of prices for the Platts Gulf Coast or New York Harbor (as applicable) are interrupted or modified to a degree which would require alteration of the computation formula to determine a fair price, or

C. The use of the Platts Gulf Coast Water Borne mean prices or New York Harbor computation becomes non-representative of the market..

4.2 If it is determined by the City to be in its best interest to substitute an alternate method for price adjustment as specified above, the contractor(s) will be notified thirty (30) days prior to the effective date for the alternate adjustment. If an alternate price adjustment method is not acceptable to all awarded contractor(s), the City may cancel this contract in whole or in part by giving the contractor(s) ninety (90) days prior written notice.

5. INVOICING

5.1 All invoices shall be provided to each participating agency via an electronic method within twenty-four (24) hours of date of delivery of product. Each invoice shall reference the date of the applicable published **Platts** price for that day with the appropriate differential as per the contract. Successful proposer shall list separately on invoice each individual non-exempt tax/fee and the amount of the differential.

6. ORDERING & PAYMENT:

6.1 Each participating governmental agency will, based on the award of contract made by the Lead Agency and with the same prices, terms, and conditions establish its own contract with the successful proposer(s) in a manner acceptable to the successful proposer; will issue its own purchase orders; will require separate billing and will issue its own tax exemption certificates as required by the successful proposer.

6.2 The City of Coral Springs Purchasing Division will furnish a copy of proposers list and any other information submitted with the proposals to all participating agencies.

6.3 Payment will be **made by each Participating Agency** within ten (10) calendar days from delivery of product at Participating Agencies location via wire transfer to seller's account and bank, as indicated on the invoice.

6.4 It is understood and agreed that the City of Coral Springs is not a legally bound party to any contractual agreement made between any other agency and the successful proposer as a result of this Request for Proposals.

6.5 After award of contract(s) to successful proposer(s) the City reserves the right to issue purchase orders in accordance with the terms of this contract.

7. Reporting Requirements

The selected Proposer shall submit to the Lead Agency a Fuel Purchasing Report on a monthly basis. The fuel Purchasing Report shall include fuel volume totals by fuel type for each