



OFFICE OF INSPECTOR GENERAL CITY OF JACKSONVILLE

CONTRACT OVERSIGHT REVIEW

NUMBER 2014-11-0002

ISSUE DATE: JANUARY 16, 2018

James R. Hoffman
Inspector General

"Enhancing Public Trust in Government"

UNSUBSTANTIATED ALLEGATION OF CONTRACTOR FAVORITISM

EXECUTIVE SUMMARY

The Office of Inspector General (OIG) received an anonymous complaint on November 19, 2014, alleging favoritism in the procurement of contracts regarding engineering services for the City of Jacksonville (COJ) National Pollutant Discharge Elimination System (NPDES) Engineering and Permit Administration.

Based on the documents and information reviewed, the OIG *found no facts to support the allegation of favoritism* as to the original contract, Contract # 6398-4. The OIG review also concluded the re-bid of the contract in 2016 complied with Sect. 126, *Ordinance Code*, (Procurement Code).

DETAILED FINDINGS

COJ and the vendor originally entered into Contract # 6398-4 referred to in the complaint on June 24, 1991. The original term of Contract # 6398-4 was until June 1, 1992. The original maximum indebtedness allowed under the original contract was \$472,609.00. The Request for Proposals (RFP) and the contract both stated that the services performed for the project would be in two phases and that the "original agreement for consultant's services may be for Part I of the NPDES Permit Application phase only."

The contract was amended twenty-four (24) times from April 3, 1992 through January 4, 2016. These amendments increased the scope of services, the maximum indebtedness of the COJ, and/or the term of Contract # 6398-4. After the contract amendments, the amended maximum indebtedness amount of the contract was \$18,678,123.43. According to the Public Works Department (Public Works), the COJ paid the vendor \$18,448,662.35 in cumulative payments over the life of the contract.

On June 6, 2016, COJ re-bid the contract for NPDES Engineering and Permit Administration Services. The Procurement Department (Procurement) received two responses to the 2016 RFP. Per a review of the records, the Professional Services Evaluation Committee (PSEC) recommended to the Mayor approval of the highest ranking bidder. The COJ entered into a new contract on December 26, 2016, for a term of two years (until December 25, 2018) with up to two (2) additional two (2) year extensions.

As part of its review, the OIG reviewed Florida Statute (F.S.) §287.057 (13); the Procurement Code, Contract # 6398-4 (as amended); the RFPs regarding NPDES Engineering and Permit

Administration Services; and the current contract. In addition to the records review, the OIG spoke with COJ employees from both Procurement and Public Works regarding these contracts.

A review of the records disclosed the original contract negotiated was consistent with the RFP. Based on the original RFP and contract as well as conversations with COJ Administration, the original contract was envisioned to grow beyond the stated amount of \$472,609.00, in that the original agreement was related to the permit application phase (Phase I of Contract # 6398-4.) The OIG reviewed the Procurement Code and found no prohibition against amending a professional services contract to extend the term of the contract indefinitely. However, Section 126.302(b)(4) of the Procurement Code states, “any contract negotiated as a result of the procedures established by the provisions of this Chapter, and which is the product of a request for proposals (RFP) shall not substantially deviate from the proposal approved in response to the applicable RFP.” A review of the Procurement Code disclosed that there is no definition of “substantially deviate” contained in the Procurement Code.

Conclusion:

Although the amendment of the original contract 24 times may have created the appearance of favoritism, this appearance is mitigated by the procurement process, which required review and recommendation by the PSEC and final approval by the Mayor (during six different administrations). In this case, each amendment to Contract # 6398-4 was recommended for approval by the PSEC and signed by the Corporation Secretary in compliance with the Procurement Code.

RECOMMENDED ACTIONS

The OIG respectfully recommends the following:

1. Update Sect. 126.302(b)(4), *Ordinance Code*, to include a definition of “substantially deviate” as that term is used in Sect. 126.302(b)(4), *Ordinance Code*;

Sect. 126.302(b)(4), *Ordinance Code*, states, “[a]ny contract negotiated as a result of the procedures established by the provisions of this Chapter, and which is the product of a request for proposals (RFP) shall not substantially deviate from the proposal approved in response to the applicable RFP.”

The OIG recommends that “substantially deviate” be defined in the Procurement Code and include some measurement value (i.e. percentage) to coincide with the definition as it relates to deviation from the original contract amount. Similar to the Change Order requirements found in, Sect. 126.201(d)(7), Procurement Code, the term “substantially deviate” can be defined as “an amount greater than ten percent of the award amount in the aggregate.”

2. Include in the documents submitted to PSEC a statement as to contract performance.

Pursuant to F.S. §287.057(13) when a State contract amendment creates a longer term or increased payments (over a threshold amount) the State requires “a written report concerning contract performance . . .” to be provided to the final authority prior to the

execution of the amendment. The OIG notes that under the current process, the Chief of the Engineering and Construction Management Division provides the Chairman of the PSEC a Memorandum describing proposed amendments to a contract. The OIG recommends this Memorandum incorporate a brief statement as to contract performance, including but not limited to vendor performance.

3. Limit extensions of contracts.

The OIG recommends including language in the Procurement Code or Procurement Manual to limit extensions of contracts.¹ The OIG has discussed this specific issue with Procurement and is aware that Procurement is actively reviewing the Procurement Manual to include language that would limit the extension of contracts.

4. Ensure the planned scope of the project is clearly laid out in the RFP and includes foreseeable extensions of the work and scope as well as increased contract value.

Given the unique nature of this project, the City anticipated the scope of work and dollar value would need to be amended. Language in Contract # 6398-4 referred to additional scope of work (Phase II). Language relating to an anticipated increase in both scope of work and contract value was not included in the RFP in 1991. When foreseeable, inclusion of this additional information in the RFP may provide for greater responsiveness by prospective bidders.

MANAGEMENT COMMENTS AND CORRECTIVE ACTION

On November 16, 2017, the Chief Administrative Officer, Office of Mayor Lenny Curry, City of Jacksonville, Florida, was provided the opportunity to submit a written explanation or rebuttal to the findings in the draft Contract Oversight Review. *This review did not identify any wrongdoing or misconduct by any City employees or departments.* However, the OIG forwarded a draft copy for comments related to City policies and procedures reviewed. The Administration was provided the opportunity to comment on the findings in the draft Contract Oversight Review within twenty-one (21) calendar days, due on or before November 21, 2017. On November 21, 2017, the OIG received a written response from the Administration. The Administration's response in its entirety is attached to this report (Attachment 1).

¹ As noted by the Miami-Dade County Office of Inspector General, "there may be benefits to employing the same firm repeatedly, but that there are also benefits to be gained by going to the open market, via a competitive solicitation. Because price is an important factor—and it especially should be for public entities in light of ever growing budgetary deficits—it behooves . . . officials to competitively seek price proposals as part of the RFP process." Final Audit Report, Miami-Dade County Public Schools Workers Compensation Program (IG08-25SB, November 5, 2009).



City of Jacksonville, Florida

Lenny Curry, Mayor

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ONE CITY. ONE JACKSONVILLE.

To: Lisa A. Green
Deputy Inspector General

From: Marlene Russell 
Director of Organizational Effectiveness

Date: November 21, 2017

SUBJECT: Contract Oversight Review – Number 2014-11-0002

The Procurement Division has reviewed the subject report from the Office of Inspector General and offers the following response pursuant to your request for the following Recommended Actions 1-4:

OIG Recommended Action 1 - "Update Sect. 126.302(b) (4), Ordinance Code, to include a definition of *substantially deviate* as the term is used in Sect. 126.302(b) (4), Ordinance Code;

Sect. 126.302(b)(4), Ordinance Code, states, "[a]ny contract negotiated as a result of the procedures established by the provisions of this Chapter, and which is the product of a request for proposals (RFP) shall not substantially deviate from the proposal approved in response to the applicable RFP."

The OIG recommends that "substantially deviate" be defined in the Procurement Code and include some measurement value (i.e. percentage) to coincide with the definition as it relates to deviation from the original contract amount. Similar to the Change Order requirements found in, Sect. 126.201(d) (7), Procurement Code, the term "substantially deviate" can be defined as "an amount greater than ten percent of the award amount in the aggregate."

Procurement Response #1

The term "substantially deviate" used in 126.302(b) (4) is not applicable to the contract and amendments examined by the OIG in the subject report. It is in reference to the final contract negotiated after initial selection of the number one ranked firm. This section of the code is telling us to ensure the resulting contract from negotiations should not be different from the content of the number one ranked respondent's proposal. That is a different context than how the OIG is using it in reference to the contract they examined in the subject report. In fact, the OIG in their report stated "A review of the records disclosed the original contract negotiated was consistent with the RFP" Therefore, to define "substantial deviation" as it is used in the Procurement Code and in the recommendation from the OIG would be irrelevant. It appears the OIG is attempting to state that subsequent amendments and change orders shall not substantially deviate from the original purpose of the RFP. Notwithstanding, Procurement understand the intent of the OIG and agrees that subsequent amendments should not differ to the extent they alter the original intent of the RFP's specification. However, we disagree that "substantial deviation" should be defined in the Procurement Code since it has a completely different meaning than how it was used in the OIG report.

The ten percent example also given by the OIG is in reference to Change Orders for construction that would have not otherwise gone before the awarding authority for approval had they exceeded the ten percent threshold. The amendments and contract examined as part of the subject report were all submitted and approved before the awarding authority regardless of threshold amount or scope increase. Therefore, the ten percent example is not applicable since all formal actions are, according to our code, brought before the awarding authority for approval.

OIG Recommended Action 2 - Include in the documents submitted to PSEC a statement as to contract performance.

Pursuant to F.S. §287.057(13) when a State contract amendment creates a longer term or increased payments (over a threshold amount) the State requires "a written report concerning contract performance..." to be provided to the final authority prior to the execution of the amendment. The OIG notes that under the current process, the Chief of the Engineering and Construction Management Division provides the Chairman of the PSEC a Memorandum describing proposed amendments to a contract. The OIG recommends this Memorandum incorporate a brief statement as to contract performance, including but not limited to vendor performance.

Procurement Response #2

The statute referenced above does not apply to the amendment or contract examined by the OIG. It applies to a State Agency and Exceptional Purchases which are "Exemptions" under our code 126.107, Single Source Procurements, 126.206, 126.312 and Emergency Procurements, 126.207 and 126.311, all of which have nothing to do with the contract in question which was competitively procured.

287.057(13) "Exceptional purchase contracts pursuant to paragraphs (3) (a) and (c) may not be renewed. With the exception of subsection (10), if a contract amendment results in a longer contract term or increased payments, a state agency may not renew or amend a contract for the outsourcing of a service or activity that has an original term value exceeding \$10 million before submitting a written report concerning contract performance to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 90 days before execution of the renewal or amendment."

Although the statute referenced would not apply in the contract examined by the OIG, Procurement agrees it can require the Using Agency to confirm in its written recommendation to the awarding authority that the contractor has performed at a satisfactory level.

OIG Recommended Action 3 - Limit extensions of contracts.

The OIG recommends including language in the Procurement Code or Procurement Manual to limit extensions of contracts. The OIG has discussed this specific issue with Procurement and is aware that Procurement is actively reviewing the Procurement Manual to include language that would limit the extension of contracts.

Procurement Response #3

Procurement has drafted language for inclusion in the Procurement Manual that will address contract extensions. The new language will be published by the end of Q2 of this FY.

OIG Recommended Action 4 – Ensure the planned scope of the project is clearly laid out in the RFP and includes foreseeable extensions of the work and scope as well as increased contract value.

Given the unique nature of this project, the City anticipated the scope of work and dollar value would need to be amended. Language in Contract #6398-4 referred to additional scope of work (Phase II). Language relating to an

anticipated increase in both scope of work and contract value was not included in the RFP in 1991. When foreseeable, inclusion of this additional information in the RFP may provide for greater responsiveness by prospective bidders.

Procurement Response #4

The RFP examined under this report was developed in 1991 and was very unique. Today, all formal RFPs and ITBs contemplate and list the term of the contract with available renewal options and a dedicated section for clearly defining the scope of work and/or specification.

cc: Sam E. Mousa, Chief Administrative Officer
Mike Weinstein, Chief Financial Officer
Greg Pease, Procurement Division Chief
James Hoffman, Inspector General
File No. 2014—11-0002