



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Bruce Loucks, City Manager, City of Cooper City

From: John W. Scott, Inspector General 

Date: July 20, 2012

Subject: **OIG Observation, Review, and Comment Re: Cooper City Invitation to Bid No. 2010-5 for Asphalt/Concrete Patching and Restoration, Ref. OIG 120603009**

As part of the Broward Office of the Inspector General's (OIG) Contract and Procurement Oversight Program, the OIG reviewed the above-captioned procurement conducted by the City of Cooper City (City). The OIG review noted deficiencies in the solicitation document and the subsequent evaluation process. This memorandum documents the OIG's observations and contains recommendations for improving the transparency of the City's procurement process, thereby minimizing the process's vulnerability to abuse.

As part of its review, the OIG analyzed all documentation related to the procurement and interviewed City officials with knowledge of the events in question. The OIG appreciates the cooperation of City officials during the review process. City staff ensured that the OIG was expeditiously provided with copies of all requested materials and City officials were readily available to answer any questions.

The Solicitation

Invitation to Bid (ITB) No. 2010-5 for Asphalt/Concrete Patching and Restoration was advertised by the City on June 9, 2010. Section 4, Technical Specifications of the ITB, indicates that the "scope of work for this contract is to perform, on an as needed basis, asphalt patching, street repair/restoration, street replacement, and concrete restoration....The work may include, but not limited to:

1. Patching of potholes
2. street repair/restoration after utilities excavation
3. repair/restoration/installation of concrete curb and gutter
4. 4" and 6" concrete removal and restoration."

A review of the solicitation indicates that City officials did not contemplate the process by which they would evaluate the bids. The *Method of Award* listed in the bid document stated that "the contract will be awarded to the *lowest* responsive, responsible Bidder(s) whose Bid(s), conforming to the ITB, is most advantageous to the City." The Bid form included in this contract requested unit prices for 36 items related to the listed specifications. Some of the items on the list were mutually exclusive, in that the City would only require one service or the other, but not both services for any given project.

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However, the ITB did not include the desired quantities. As a result of this bidding mechanism, a reasonable vendor would not be able to determine, from the solicitation document, in what manner the City would select the “lowest” bidder.

The Evaluation Process

The City opened the bids on June 24, 2010 and there were four responses.¹ The OIG determined that two bid tabulations were created by the City for this ITB. The Purchasing Agent created the original bid tabulation, which attempted to tally all of the prices contained in the bid form as requested in the advertised ITB. However, due to the composition of the items on the bid form, this method would not result in proper determination of the lowest bidder.

Subsequently, the Director of Utilities - City Engineer (Director) created a second bid tabulation. To determine a lowest bidder, the Director based his tabulation on the Utilities Department’s actual usage of the specified services over a recent six-month period. He included estimated quantities for only *seven of the thirty-six items* listed on the bid form, and he multiplied the unit prices submitted by the bidders in order to evaluate the responses. The Purchasing Agent admitted that the evaluation criteria is customarily included in a solicitation for maintenance and repair services; however, in this solicitation, she could not explain why the evaluation criteria was modified after bids were received, and without notice to the bidders.

On July 12, 2010, the City Manager submitted a recommendation for Commission approval of the referenced contract based on the seven items selected by the Director and the quantities established in the second bid tabulation after the bid was opened. It should be noted that, although the Commission was informed of the criteria used to determine the lowest bidder, it was *not* informed that this criteria was not included in the ITB and was created after the sealed bids had been opened. The Commission approved award of the contract to the recommended vendor for a term of three years, with an option to renew for two additional one-year periods. The annual estimated value for this contract is \$40,000.

OIG Concerns and Recommendations

An open, fair and transparent procurement process requires that vendors understand the services for which they are bidding and the method by which their offer will be evaluated. As stated in the ABA’s Model Procurement Code, “[f]air and open competition is a basic tenet of public procurement. Such competition reduces the opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. Bids shall be evaluated based on the requirements set forth in the Invitation for Bids.... The Invitation for Bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the Invitation for Bids.” Florida courts have addressed the issue and found that “a public body is not entitled to omit or alter material provisions required by the RFP because in doing so the public body fails to ‘inspire public confidence in the fairness of the [RFP] process.’” *Emerald Corr. Mgmt. v. Bay Cnty. Bd. of Cnty. Comm’rs*, 955 So. 2d 647 (Fla. 1st DCA 2007).

¹ One bidder was disqualified because it did not respond as required by bid instructions.

This contract was awarded based on modified evaluation criteria developed after the bids had been reviewed. The OIG determined that neither the itemized quantities nor the usage information were included in the advertised bid. Therefore, the vendors who responded to the ITB were not informed of the evaluation criteria the City ultimately used to determine the lowest bidder. In fact, the criteria contained in the solicitation was so inadequate that the Purchasing Agent was unable to determine a low-bidder based solely on the information contained in the bids.

The OIG stresses that it does not take issue with the criteria ultimately applied by the Director. His approach is arguably reasonable and appropriate. However, because the bidders were unaware of the approach the City would take, the procurement process was subject to an appearance that it could be subsequently manipulated in a manner which could result in the selection of a favored vendor. While there is no evidence that the City engaged in favoritism in this procurement, a faulty evaluation process, such as the one exhibited in this case, is ripe for abuse. Further, inclusion of the evaluation criteria in the present instance may have resulted in more competitive pricing for the services most often used by the City, as vendors often tailor their bids to improve their chances for award.

To address the vulnerability we identified in the present procurement, the OIG makes the following recommendations to strengthen the City's procurement practices:

- The City Purchasing manual should be updated to explicitly state that all solicitations should include the evaluation criteria, which communicates to potential bidders how the bids will be evaluated in order to foster an open and fair competitive solicitation. Facts material to the evaluation process should be communicated in the solicitation document. For example, in this instance, the ITB should have included the most commonly used services for the past six months as that information was used as a multiplier to determine the lowest bidder.
- In the interest of transparency, the City should ensure that the evaluation criteria contained in an advertised solicitation is not modified after the bid opens.
- All deletions or modification made to a solicitation during bid advertisement should be published via addendum and announced to all potential bidders.
- The Commission should be informed of any significant deviations from the solicitation document prior to award of the contract.

The OIG has discussed these findings and recommendations with City officials. We will continue to make available our Contract and Procurement Oversight services to the City as it addresses the issues raised in this review, and will continue to work with the City to reduce potential vulnerabilities in the procurement process.

cc: Honorable Debby Eisinger, Mayor, and
Members, City Commission of the City of Cooper City