



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Honorable Bill Ganz, Mayor,
and Members, City of Deerfield Beach Commission

From: John W. Scott, Inspector General 

Date: April 24, 2019

Subject: **OIG Closing Memorandum Re: *Deficiencies in City of Deerfield Beach Charter Language, Procurement Code, and Employee Training, Ref. OIG 16-006-A***

The purpose of this memorandum is to report that the Broward Office of the Inspector General (OIG) has concluded its investigation into concerns that City of Deerfield Beach employees engaged in misconduct by having improper conflicting relationships with city vendors in violation of §112.13(3) and §112.313(7)(a), Florida Statutes. While the OIG's investigation did not reveal that any of the city's employees engaged in misconduct, it identified numerous deficiencies in the city's ethics and procurement processes—deficiencies that led to some questionable procurements. We write this memorandum to address these deficiencies in an effort to strengthen the city's procurement process and reduce its exposure to abuse.

The OIG's Scope

Our investigation originated from a review of the city's purchases with certain vendors from Fiscal Year 2013 to Fiscal Year 2015.¹ We focused our review on vendors who either appeared to be a city employee or related to a city employee. Those vendors included:

Pace Setters In Training (Pace Setters)

Pace Setters was a water safety, lifeguarding, and swim training firm in Boca Raton. Pace Setters's owner, T.B., was an ocean rescue lifeguard who had been with the city for over 13 years. His duties as a lifeguard were limited to ensuring public safety. He was not involved in procurement. The city paid Pace Setters a total of \$2,750 to conduct two separate aquatic training courses for city employees in 2015. The first invoice, dated September 7, 2015, was in the amount of \$1,250; the second invoice, dated October 1, 2015, was in the amount of \$1,500.

¹ As our investigation proceeded, we increased our scope to include Fiscal Year 2010.

Getting Green Plant Service (Getting Green)

Getting Green was located in Davie, Florida, and specialized in providing plant materials for its clients. R.S. was the president and owner of Getting Green. R.P. served as its operations manager. R.P.'s brother, M.P., was the city's parks superintendent who started with the city in June 2015. As the city's parks superintendent, M.P. budgeted, planned, and implemented the city's landscaping and maintenance projects. Among other duties, he also selected and procured project materials and communicated with vendors. Between September 11, 2015, and May 6, 2016, the city paid Getting Green a total of \$32,937.²

Just In Stitches

Just In Stitches was an embroidery and silk-screen apparel company located within the city. C.C. was the company's owner and sole employee. C.C.'s son, J.C., was a per diem ocean lifeguard who was with the city since May 2006. He worked as a lifeguard for the city approximately 10 to 20 times per year. He was not involved in the business. Between January 27, 2012, and August 12, 2016, the city paid Just In Stitches a total of \$109,780.21—\$39,144.70 of it during Fiscal Year 2016—for supplying apparel to multiple departments within the city.

The OIG's Review and Observations

Considering the relationships that the OIG identified between these vendors and certain city employees, we endeavored to determine whether any of the relationships ran afoul of either section 112.313(3) or section 112.313(7)(a) of the Florida Statutes, statutes that seek to minimize or eliminate conflicts of interest held by public officials and employees.³ Ultimately, the OIG's review did not establish that any of the city's employees engaged in misconduct. However, during the OIG's investigation, we became troubled by several vulnerabilities in the city's processes. Because they expose the city to abuse, they warrant attention here.

The City Has No Process for Affected Parties to Comply with Charter Mandates

Like the Florida Statutes, the City of Deerfield Beach's Charter also addresses conflicting relationships. Section 8.02 of the charter, titled, *Personal financial interest*, directs "[a]ny city...employee...or members of their immediate families who have a financial interest, direct or indirect in any corporation, partnership or other organization in any contract with the city...or in the sale of any...material supplies or services to the city or to a contractor supplying the city..." to make known that interest at the time the matter is under consideration. If the interest is substantial, the employee must not participate in the

² During this time frame, Getting Green submitted a total of 23 invoices to the city.

³ Section 112.313(3) forbids a public employee, acting in a private capacity, from selling any goods or services to his or her own agency. Section 112.313(7)(a) prohibits a public employee from having a contractual relationship or employment with a business entity that is doing business with the employee's agency. It also prohibits contractual relationships or employment that will create a "continuing or frequently recurring" conflict of interest or that would "impede the full and faithful discharge" of the public employee's duties.

sale or the performance of the contract. Doing so puts the employee's position at the city in peril.

While the city's mandate is clear as to the regulated conduct and the penalty, it provides no guidance as to how the affected party is to comply with the requirement or what constitutes compliance. Indeed, city staff confirmed that the city has no protocol in place by which anyone charged with reporting his or her interest pursuant to Section 8.02 can communicate that interest. Guidance was especially important here, given the fact that, during our investigation, we identified several vendors who had an immediate family member employed by the city and members of city staff were aware of the relationship.

The City Does Not Provide Ethics Training to All Employees

It is without dispute that ethics in government is integral to fostering public trust and, in turn, effective government. It follows then that, in order for a government agency to expect its employees to conduct themselves in an ethical manner, it must provide them with ethics training so that employees are aware of the city's expectations.

Our investigation revealed that the city does not provide ethics training to all its staff. Instead, according to the city, it incorporates an ethics and conflicts of interest section into the annually required procurement training for employees who make purchases on the city's behalf, as well as those who hold a procurement card. However, during its investigation, the OIG conducted interviews with multiple members of city staff from lifeguards to members with purchasing duties. All of them indicated that the city had not provided them with training on ethics, to include conflicts of interest.

That city staff did not have a firm grasp of their ethical obligations as public servants was clear by the city's procurement of Pace Setters to provide city staff with aquatic training. This was despite the fact that a city employee, a lifeguard in the same department, owned the company. The OIG's review of that procurement revealed that the city's superintendent of recreation and ocean rescue chief, who were both involved in the procurement, knew that the lifeguard owned Pace Setters. Notwithstanding that fact, the ocean rescue chief, with the city's superintendent of recreation's knowledge, approached the city lifeguard about hiring his company to conduct the training.

Notably, the lifeguard, the ocean rescue chief, and the superintendent of recreation all indicated that the city had not trained them on conflicts of interest. In fact, the superintendent of recreation—the employee that signed the authorization to pay Pace Setters—did not even know that there existed a prohibition against purchasing goods and services from companies in which Deerfield employees have a substantial interest.⁴

⁴ Given the lifeguard's ownership interest in Pace Setters, staff approaching him and having Pace Setters provide instruction may have skirted statutory, as well as charter, prohibitions against conflicting relationships. Specifically, we are mindful of the provision in the Florida statutes that permits certain apparently conflicting relationships where there is no actual interference in the full and faithful discharge of public duty. Section 112.316. Had the city provided training on conflicting relationships to those involved, we expect that the city would have either hired an outside contractor to provide the services or negotiated with the employee to perform additional duties as part of his job.

The City's Purchasing Thresholds Should be Clearer

After our investigation began on this matter, the city amended its procurement code, including a change to purchasing thresholds. However, those changes featured language which raised several questions as to the new thresholds' application.

Prior to February 16, 2016, section 38-126 of the city's code, titled *Purchasing Thresholds*, instructed that department heads had authorization to purchase goods and services less than \$2,500.00 for a single purchase. Purchases between \$2,500.00 and \$5,000.00 required three documented verbal quotes. Purchases between \$5,000.00 and \$25,000.00 required three written quotes. Finally, barring any exemptions, the purchasing division was to issue sealed competitive solicitations for purchases of \$25,000.00 or more.

On February 16, 2016, the city changed this section. Significantly, the new section included the following preface: "The following purchasing thresholds shall apply to all procurements, unless exempted pursuant to section 38-133 below, *and shall be based on the cumulative or anticipated total fiscal year expenditure for each vendor*" (emphasis added). It increased the purchasing thresholds and amended the requirements for the respective purchasing method.

While the OIG was encouraged to see the city amending its code to account for relevant procurement trends, we noted that the language used in the new preface would benefit from clarification. By prefacing its procurement code with the language that the thresholds were to "based on the cumulative or anticipated total fiscal year expenditure for each vendor," the city set out to communicate that a purchaser needed to consider the expected cumulative expenditure for that vendor in that fiscal year when determining which procurement method applied. However, the code did not specify whether the cumulative or anticipated total was a department-wide or city-wide total.

The distinction was notable during our review of the city's purchases of services from Just In Stitches. In fiscal year 2016, the city paid Just In Stitches at least \$39,144.70. However, a number of departments used this vendor. While the city might have intended for its new language to direct a competitive solicitation for purchases such as these, the language, in and of itself, is vague where not one department alone exceeded the \$30,000 threshold. As these circumstances are capable of repetition, the city would benefit from clarifying language in order to adequately inform its departments of its expectations.

The City Has No Controls to Protect Against Abuse on Lower Threshold Purchases

Finally, our investigation revealed that the city has no controls in place to protect against abuse in lower threshold purchases, such as the ones the city made with Getting Green. In Getting Green, we noted that the Parks and Recreations Department, with M.P. as its supervisor, selected Getting Green to provide the city with plant material on 23 occasions for a total of \$32,937. By his own admission, M.P., personally, made a number of these purchases as, according to him, he knew Getting Green would be able to get all the supplies

his department needed.⁵ Our review did not reveal any indication that the city did business with Getting Green before M.P. became employed with the city.⁶ M.P.'s younger brother, R.P., is Getting Green's operations manager. R.S., the owner of Getting Green, has known M.P. and R.P.'s family since R.P. was in high school. While the majority of the city's purchases of Getting Green's services stayed below the threshold requiring quotes, in one of the two instances where the city required quotes, we noted that M.P. did not obtain three true apples-to-apples quotes before awarding the work to Getting Green.⁷ Further, M.P. not only selected Getting Green but also initialed a number of its invoices prior to submitting them for payment.

M.P.'s selection of Getting Green for the city's plant materials, under these circumstances, was troublesome. As is, it created the appearance of impropriety. Had we been able to determine that M.P. corruptly intended to secure someone a special privilege by selecting Getting Green, it would have constituted a misuse of position.⁸ A review of the city's purchasing code revealed that there were no controls in place to regulate or prohibit the city's repetitive selection of one vendor for those purchases that fall under the threshold requiring quotes.

Conclusions and Recommendations

The OIG has concluded its investigation into concerns that City of Deerfield Beach employees engaged in misconduct by having improper conflicting relationships with city vendors. We did not substantiate this concern. However, during our investigation, we observed a number of deficiencies in the city's processes that would benefit from the city's attention. To that end, the OIG recommends the following:

- Create a protocol by which those charged with the duty to notice the city of their financial interest in a particular transaction pursuant to section 8.02 of the charter can do so.
- Require that *all* City of Deerfield Beach employees attend ethics training, as potential conflicts of interest are not just a management or procurement level topic. This ethics training should include instruction on how to comply with the city's protocols.
- Until retention requirements expire, keep a record of attendance for all city-mandated and city-sanctioned training, to include procurement training.
- For lower threshold purchases, create a step in the purchase requisition process whereby requestors must disclose the presence or absence of conflicts. Furthermore, the city

⁵ The city provided us with 18 of Getting Green's 23 invoices to the city. M.P. either garnered quotes, or initialed the invoices, on 14 of those 18 purchases.

⁶ We reviewed the city's transactions dating back to 2010.

⁷ M.P. requested quotes from Getting Green as well as two Homestead suppliers for several plant materials, some of which were not available in Homestead. The fact these plant materials were unavailable in Homestead was common knowledge in the nursery community. M.P. selected Getting Green, citing the fact that it was able to provide all the plant material that the city sought while the other vendors were not.

⁸ We also concluded that R.P. did not have an equity stake in Getting Green, nor did he financially benefit from increased sales to his employer.

should ensure that employees maintain separate roles within the purchasing process so that the employee authorizing a purchase of goods and services is not also vouching for its receipt or authorizing its payment.

- Define “cumulative or anticipated total fiscal year expenditure” as used in section 38-126 of the city’s code. If the “cumulative or anticipated total fiscal year expenditure” is a citywide total, the OIG further recommends that the city institute a process by which individual departments can work with the finance department to keep abreast of those running totals.

The OIG appreciates the cooperation of the city and its staff during this review. OIG staff are available to discuss our observations and to continue to work with city officials as the city addresses the concerns raised here.

cc: David Santucci, Interim City Manager



BROWARD
INSPECTOR GENERAL

2019 AUG -8 PM 2:34

July 29, 2019

Broward Inspector General
Attn: John W. Scott
One North University Drive
Suite 111
Plantation, FL 33324

SENT VIA MAIL & EMAIL

RE: Deficiencies in City of Deerfield Beach Charter Language, Procurement Code, and Employee Training, Ref. OIG 16-006-A

Dear Mr. Scott,

The purpose of this letter is to address the concerns identified by the Broward Office of Inspector General (OIG) in the OIG's closing memorandum to the City dated April 24, 2019 (the "Memo"). Based on the Memo, the OIG's investigation focused on potential employee misconduct and the City is pleased to know that the OIG's findings did not reveal any engagement of misconduct by City employees. However, the OIG did raise concerns and recommendations regarding specific policies and procedures that were in place prior to the OIG's investigation. The City of Deerfield Beach welcomes this feedback to help improve policies and increase awareness and transparency of the City's procurement process. This correspondence is intended to inform you of the action taken by the City to address the concerns and recommendations set forth in your Memo.

The OIG's Scope

Pace Setters In Training (Pace Setters)

City of Deerfield Beach Response:

T.B. is a City employee who was also a certified authorized instructor for Pace Setters. T.B. provided the training required to certify City staff at no labor cost to the City. The expenditures paid by the City related to costs for the training materials, equipment to conduct the training and the certification fees for the training participants. Nevertheless, the City has adopted a policy requiring disclosure of concurrent employment and significantly restricting the ability of an employee to provide goods and services to the City through their outside employment.

Getting Green Plant Service (Getting Green)

City of Deerfield Beach Response:

M.P. was hired in June of 2015 as the Park's superintendent. The \$32,937 amount mentioned in the memo are expenditures that occurred over the course of two fiscal years: a total of \$10,320.75



for FY 2014/15 and \$22,616.25 for fiscal year 2015/16. Thus, the purchases from this vendor were below the City's \$30,000 threshold for formal competitive bidding in accordance with Section 38-126 of the Procurement Code, "based on the cumulative or anticipated total fiscal year expenditure for each vendor." The City recognizes the OIG's recommendation regarding clarification of the annual spend language in the Procurement Code and is currently working on related clarification amendments to the Procurement Code.

Just In Stitches

City of Deerfield Beach Response:

J.C. was a will call lifeguard with the City who played no direct or indirect role in the City's procurement of commodities or services, including the procurement of apparel. The City has taken action to ensure that formal contracts with vendors are in place, the appropriate disclosures are made, and any conflicts of interest are appropriately addressed, as further detailed below. On October 16, 2018, the City awarded a contract for the purchase of assorted apparel and miscellaneous items to two vendors who brought forth competitively solicited proposals for these commodities.

The OIG Review and Observations

The City Has No Process for Affected Parties to Comply with Charter Mandates

The City Does Not Provide Ethics Training to All Employees

City of Deerfield Beach Response:

Since March 2018, the City's Procurement Staff has included ethics training as a portion of the quarterly Procurement training provided to employees. The training is mandatory for employees with procurement responsibilities. Additionally, the Human Resources Department is developing an annual ethics training program for all City employees. Per the City's existing competitive solicitation process, vendors are required to affirm that no conflict of interest exists with their proposal. As of April 2019, employees appointed to the evaluation committee are now required to disclose any potential conflicts in writing prior to their appointment, including but not limited to familial relationships, financial entanglements, existing partnerships, etc.

The City's Purchasing Thresholds Should be Clearer

City of Deerfield Beach Response:

On February 16, 2016, the City's Procurement Code was updated and revised. There were additional layers of procurement controls added. Additionally, purchasing thresholds were amended in Section 38-126. In this section, threshold amounts were raised to streamline the procurement process and increase competitiveness. The City intends to make further amendments to the Procurement Code in the next few months to, among other improvements, include clarification language concerning total fiscal year expenditure thresholds.



The City Has No Controls to Protect Against Abuse on Lower Threshold Purchases

City of Deerfield Beach Response:

Internal controls were added with the revisions to the Procurement Code in February 16, 2016 to address small dollar purchases. For example, all purchases over \$5,000 require a purchase order be generated. The purchasing requisition for such purchase orders must be accompanied by a minimum of three quotes and requires authorization by the Purchasing and Contract Administration Division. Since 2016, any purchases above \$10,000 must originate in the Procurement Division and Procurement is responsible for obtaining the three required quotes to safeguard fair competition, transparency, and integrity in dealing with the public in procurement activities.

In Conclusion

The City of Deerfield Beach recognizes the work and dedication of the OIG's staff members to promote ethical behavior among procurement professionals. The City strives to ensure that the City's procurement practices meet core values and best practices in procurement. The City is confident that the deficiencies outlined in the Memo have been addressed as discussed herein and the City is committed to continue to enhance its procurement practices.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Santucci", is written over a light blue horizontal line.

David Santucci
Interim City Manager

cc: City Commission
Anthony Soroka, City Attorney
Ivelsa Guzman, Purchasing Manger