



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Honorable Anthony N. Caggiano, Mayor,
And Members, Margate City Commission

From: John W. Scott, Inspector General 

Date: April 6, 2023

Subject: **OIG Closing Memorandum Re: *Potential for Fraud and Abuse in the City's Compromised Procurement Code, Ref. OIG 21-012-M***

The purpose of this memorandum is to report that the Broward Office of the Inspector General (OIG) has concluded its investigation into an allegation that the City of Margate (the city) failed to obtain other bids when it awarded a \$25,000.00 contract for resident survey services to ETC Institute, Inc. (ETC). The OIG's investigation did not substantiate that any city employee or official engaged in misconduct or gross mismanagement.¹ However, in reviewing the city's procurement code,² we identified that the code did not adhere to best practices and left the city vulnerable to fraud, waste, and abuse in its application to the procurement of services. Therefore, we write this memorandum to address the potential pitfalls the city could face as a result of its code as currently written.

The OIG reviewed several city records, including but not limited to the city's ETC resident survey services contract, data from all services that the city purchased above \$5,000.00 from January 2021 through May 13, 2022, the city's competitive solicitations available through the city's website for the period 2017 through 2022, and contract and payment records from the following cities within Broward County: Coconut Creek, Coral Springs, Fort Lauderdale, and Parkland. The OIG also interviewed the Assistant City Manager and the Purchasing Manager.

¹ The Broward County Charter (B.C.C.) defines "misconduct" as "any violation of the state or federal constitution, any state or federal statute or code, any county or municipal ordinance or code; or conduct involving fraud, corruption, or abuse." B.C.C. Sec. 10.01 A.(2). The charter defines "gross mismanagement" as "the material waste or significant mismanagement of public resources." B.C.C. Sec. 10.01 A.(3).

² The city's procurement code is found at City of Margate Code of Ordinances (City Code) Article II, Finances, Sections 2-23 through 2-40.

The Importance of Competitive Bidding in Government Procurement

The American Bar Association's (ABA) Model Procurement Code tells us that "[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."³ According to the National Institute of Governmental Purchasing (NIGP),⁴ competitive bidding is "[t]he process of inviting and obtaining bids from competing suppliers, by which an award is made to the lowest responsive bid from a responsible bidder meeting written specifications. The process provides potential bidders with a reasonable opportunity to win a contract."⁵ Additionally, the Florida legislature "recognizes that fair and open competition is a basic tenet of public procurement; that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured."⁶

Florida law also recognizes the importance of competition, specifically defining a competitive solicitation as "the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement."⁷ Competitive bidding laws protect the public by preventing public agencies from making arbitrary and capricious awards to bidders or making awards based on personal preference. Furthermore, bidders benefit because the process assures them fair consideration for their offers, and public agencies get the opportunity to purchase goods or services at the best possible price.⁸

Background

On May 3, 2021, the OIG received a link to a MargateNews.net article and an allegation that the city failed to solicit more than one informal bid when it purchased resident survey services from ETC for \$25,000.00.⁹ The survey was a seven-page survey which randomly sampled households in the city and was intended to (1) assess residents' satisfaction with the delivery of city services, (2) help determine priorities for the community, and (3) compare the city's performance with residents in other communities both statewide and nationally. The

³ ABA Model Procurement Code, Part B – Methods of Source Selection § 3-201, COMMENTARY (3) (2000).

⁴ According to its website, "NIGP has been developing, supporting, and promoting the public procurement profession through premier educational and research programs, professional support, technical services, and advocacy initiatives that benefit members and other important stakeholders since 1944." Retrieved on March 22, 2023, from <https://www.nigp.org/about-nigp/about-nigp>.

⁵ NIGP, Dictionary of Procurement Terms. Retrieved on March 21, 2023, from <https://www.nigp.org/dictionary-of-terms?letter=c&page=14>.

⁶ Florida Statutes (Fla. Stat.) § 287.001 (2002).

⁷ Fla. Stat. § 287.012(6).

⁸ *Marriott Corp., v. Metro. Dade County*, 383 So. 2d 662, 665 (Fla. 3d DCA 1980) (quoting *Hotel China & Glassware Co. v. Bd. of Pub. Instruction*, 130 So. 2d 78, 81 (Fla. 1st DCA 1961)).

⁹ [Margate Resident Survey Cost \\$25,000. Purchase Points to Compromised Procurement Process \(margatenews.net\)](#), May 2, 2021. Retrieved on January 30, 2023.

article compared the city's purchase to a similar purchase by the City of Parkland, which paid SurveyMonkey about \$350.00 a year for a resident satisfaction survey that city staff created and analyzed. It also compared the city's purchase to a purchase by the City of Coconut Creek, which reportedly spent about \$3,000.00 for a resident survey that SBrand Consulting, LLC, conducted and analyzed. According to the article, both the Parkland and Coconut Creek resident surveys were conducted online, but Margate's 400 surveys would be via mail, online, and by phone.

MargateNews.net learned that the City Manager's office oversaw the survey purchase. Specifically, it noted that the Assistant City Manager was listed as a contact for residents who had questions regarding the survey and that he was previously a commissioner for the City of Coral Springs, which had used ETC numerous times during his time on the city commission.

In response to a request from MargateNews.net for information regarding what other companies the city solicited informal bids from, the city's explanation, as reported in the article, was that the procurement complied with section 2-25(a)(6)-(8) of the City of Margate Code of Ordinances (City Code).

The City's Purchasing Code

Effective July 5, 2017, the commission amended City Code Section 2-25, titled "Purchasing procedures," in part, to read:

- (a) Procedure generally. Where bids, requests for proposals, and letters of interest are required under the applicable subsections of sections 2-26 and 2-27 of this Code and the applicable procedure has not been dispensed with pursuant to any provision of the above sections of the Code or where bids, requests for proposals, and letters of interest are requested at the discretion of the city commission or city administration, all projects, franchises, services, supplies, materials or equipment shall be requested as follows:
 - (1) All bids, requests for proposals, and letters of interest for projects, services, supplies, materials or equipment, and cooperative agreements shall be approved by the city manager. . . .
 - (4) All awards for city projects, franchises, supplies or equipment that cost over fifty thousand dollars (\$50,000.00) shall be authorized by the city commission. . . .
 - (6) Any purchase of services up to fifteen thousand dollars (\$15,000.00) shall be made by the department director or designee without further action.
 - (7) All services that cost greater than fifteen thousand dollars (\$15,000.00) shall be authorized by the city manager.
 - (8) All services that cost greater than fifty thousand dollars (\$50,000.00) shall be authorized by the city manager with notification to the city commission. . . .

The commission also amended City Code Section 2-26, in part, which reads in part: . . .

(c) Responsibilities and authority.

- (1) Any purchase of supplies, materials or equipment not exceeding the sum of three thousand five hundred dollars (\$3,500.00) shall be made by the using department director or designee, utilizing a variety of sources wherever possible, without further action.
- (2) Any purchase of supplies, materials, or equipment over the sum of three thousand five hundred dollars (\$3,500.00) and not exceeding the sum of ten thousand dollars (\$10,000.00) for budgeted items shall be by informal quote (phone or facsimile). Any purchase of supplies, materials, equipment, or projects over the sum of ten thousand dollars (\$10,000.00) and not exceeding the sum of twenty-five thousand dollars (\$25,000.00) shall be by formal written quotation. The purchasing division shall endeavor to obtain a minimum of three (3) quotations unless the purchasing division can demonstrate that one (1) source is available.
- (3) Where said purchases are in excess of twenty-five thousand dollars (\$25,000.00) for budgeted items, invitations for written sealed bids or request for proposals shall be publicly noticed at least once.
- (4) For procurements that are a combination of services or materials, procurement requirements shall be based upon the anticipated value of the supplies and materials. If the anticipated value of the services exceeds fifty (50) percent of the contract, then procurement requirements shall be based upon the anticipated total value of services, supplies, and materials, but the services thresholds shall be utilized. . . .

Most notably for the OIG inquiry, changes to the code reflected higher purchasing thresholds as well as amendments to the purchasing procedures—such as the requirement to obtain quotes—for purchases of supplies, materials, and equipment. At the same time, the commission added provisions that do not require any procedures for the purchasing of *services* up to as much as \$50,000.00.¹⁰ Rather, the amended code authorizes (1) the department director to make any purchase of services up to \$15,000.00, (2) the city manager to make any purchase of services greater than \$15,000.00, and (3) the city manager with notification to the commission to make any purchase of services greater than \$50,000.00.

The city does not have a purchasing or procurement manual or guidance beyond the code.

Thus, the city's purchases of services such as resident surveys do not require any competition at all.

¹⁰ The procurement code does require the city to follow the state law regarding purchases of certain professional consulting and design services not relevant to this inquiry. See City Code § 2-30 and Fla. Stat. § 287.055.

The City's Procurement Process

During an interview with the OIG, the city's Purchasing Manager explained the city's procurement process. He stated that user departments electronically submitted requisitions via the city's purchasing system. Once the purchasing department received a requisition, either the Purchasing Manager or Purchasing Supervisor conducted an initial review. The initial review consisted of checking that the requisition information was accurate and that the purchase was in "conformity with the city's stated policy for procurement." That is, during the initial review, they made sure that the vendor's name was accurate and that the services or products to be purchased were adequately described. They then determined the applicable section of the purchasing code along with the appropriate dollar thresholds for the purchase. Additionally, the Purchasing Manager advised that, if the user department was purchasing a product rather than a service, then the purchasing department also verified that the user department received three quotes or researched other vendors prior to submitting the requisition. He explained that the city's purchasing code did not require quotes for the purchase of services under \$50,000.00.¹¹ Furthermore, the code did not assign the responsibility to obtain three quotes to either the user department or the purchasing department. However, regardless of which department initiated the search for vendors, the requisition still followed the same approval process.

Once the Purchasing Manager or Purchasing Supervisor completed the initial review, they forwarded the requisition to the finance department. Following the financial review, the requisition was routed back to the purchasing department, where one of the buyers in purchasing conducted a second review before issuing a purchase order to the vendor.

The City's Procurement of Survey Services from ETC Did Not Violate the City Code

The OIG determined that while the city did procure the \$25,000.00 survey service contract from ETC without competitively bidding it, the procurement did not violate the city's code. Thus, we did not substantiate the allegation. However, we caution the city going forward with the code as written, as it exposes the city unnecessarily to fraud, waste, and abuse. On December 28, 2020, the city issued a purchase order to ETC for \$25,000.00, (purchase order number 210531), to purchase resident survey services. The Purchasing Manager signed the purchase order, and the description included \$17,000.00 for the survey. This included designing the survey, administering the survey, providing a formal report including benchmarking analysis, importance-satisfaction analysis, and geocoding. This also included \$8,000.00 for optional add-on services and additional surveys as per the agreement dated December 7, 2020.¹²

¹¹ Actually, the code does not require any quotes for the purchase of services, no matter what the cost. Rather, purchases of services over \$50,000.00 "shall be authorized by the city manager with notification to the city commission." City Code § 2-25(a)(8).

¹² According to city records, as of January 31, 2023, the city paid ETC a total of \$17,000.00 for survey services provided between December 2020 through April 2021. The OIG observed that, during this time, the city did not opt to purchase the optional add-on services and additional surveys valued at \$8,000.00.

According to the Purchasing Manager, the city manager's office initiated the requisition of surveying services from ETC and was also responsible for managing the ensuing contract.

The Purchasing Manager also explained that because the purchase of survey services from ETC was a purchase of services, the city's purchasing code did not require the city manager's office to obtain three quotes or to research other vendors. Purchases of services under \$50,000.00 were approved without much review, as the city's code did not require staff to obtain any quotes. He further told the OIG that the city manager's office "followed all of the purchasing requirements with regards to [the ETC] procurement."

The Assistant City Manager told the OIG that ETC was one of two or three resident survey services vendors that he was aware of and that ETC provided similar services in Coral Springs, Fort Lauderdale, Margate, Tamarac, and more than 70 percent of municipalities throughout the United States. Although he had dealt with ETC in the past, he did not have a personal relationship with anyone at the company.

He said that he may have started the discussion about engaging ETC to conduct the Margate survey services once he learned that ETC had conducted a resident survey in the city about nine years before he was hired. And although ETC had conducted resident survey services in Coral Springs when he was a city commissioner, he was not familiar with ETC's work there.

The city did not ask ETC to submit a proposal for resident survey services but rather held discussions with the vendor, which ended with the execution of the contract. The Assistant City Manager neither knew whether city staff requested proposals from any other survey company, nor did he know whether anyone reviewed other cities' survey services contracts. However, he explained that piggybacking onto other cities' contracts would not have worked, since the scope of work of the resident survey services varied from city to city. Although ETC's reputation was established through its work in other cities, the work that Margate required was different from the services the company provided elsewhere. He explained that each city customized questions for its resident survey services; therefore, it was impossible to make an apples-to-apples comparison of the survey services in different cities. He also did not recall if anyone compared the contracts after execution.

The Assistant City Manager believed that, prior to executing the ETC contract, the city manager verified that the purchase complied with ordinances and that city staff, including the city attorney, the finance director, and the procurement administrator, reviewed the draft contract documents.

Additionally, the Assistant City Manager said that while he was familiar with the company SurveyMonkey, which the City of Parkland used for its resident surveys, he did not believe that Margate could make multi-million-dollar decisions based on SurveyMonkey surveys.

Although this procurement did not violate city code, the OIG wanted to establish whether the purchase price itself raised red flags. Thus, we sought to determine whether other cities' resident survey services contracts were comparable to the contract executed between the city and ETC.

Other Cities' Contracts for Survey Services From ETC Were Comparable to the City's

The OIG requested and received resident survey services contracts records from four other cities: (1) Coconut Creek, (2) Coral Springs, (3) Fort Lauderdale, and (4) Parkland. Our review found that the scope and cost of the Margate resident survey services contract were comparable to those of Coral Springs and Fort Lauderdale. These two cities have been purchasing similar services from ETC since 2010 and 2012, respectively. Although the MargateNews.net article only compared the Margate ETC survey services contract to those of Coconut Creek and Parkland, the OIG found that the two cities' contracts and scopes of work were not similar and therefore not comparable to that of the Margate contract.

Coconut Creek

In 2014, 2016, and 2018, the city of Coconut Creek conducted community surveys in-house. On February 25, 2020, the city executed a strategic planning services contract with SBrand Consulting for its Vision 2030, which is the city's long-range strategic plan. As part of creating that plan, SBrand Consulting would "gather information through assessments, surveys, meetings and personal interviews."¹³ The city executed a \$68,500 contract for the strategic plan, of which it paid \$1,750 for the survey portion.

Coral Springs

For the period of December 2016 through January 2021,¹⁴ the OIG found that the City of Coral Springs' expenditures on ETC surveys and the scope of services were comparable to that of the City of Margate. The city spent \$25,000.00 each fiscal year for the following surveys: resident (2017), business (2018), community (2019), business (2020), and community (2021).¹⁵

Fort Lauderdale

For the period of December 2012 through April 2021, the OIG determined that the City of Fort Lauderdale's expenditures on ETC surveys and the scope of services were also comparable to that of the City of Margate. Between 2012 and 2021 the city conducted community surveys for the following amounts, \$24,270.00 (2012-2015), \$24,755.00 (2016), \$23,500.00 (2017), \$24,755.00 (2018), \$21,420.00 (2019), \$25,495.00 (2020) and \$25,950.00 (2021).¹⁶ Additionally, the city spent \$23,950.00 in 2021 on a business survey.

¹³ Agreement between City of Coconut Creek and SBrand Consulting, LLC for Strategic Planning Services, RFQ No. 01-15-20-02, Exhibit "A" – Scope of Work.

¹⁴ The OIG notes that while contract records indicate that ETC has been providing resident survey services to Coral Springs as of October 5, 2010, the city provided ETC invoices for the period December 2016 through January 2021.

¹⁵ The fiscal year spans across two calendar years from October 1st through September 30th.

¹⁶ Note, this is based on the year of the initial invoice since some payments were made over two calendar years. Additionally, ETC called their surveys either community or neighbor interchangeably. For the purpose of this section the OIG will refer to these surveys as community surveys.

Parkland

According to the City of Parkland’s Purchasing Director, SurveyMonkey is the only paid survey service used directly by the city. However, the city also engaged consultants to conduct outreach services, such as the parks master plan services and focus groups for the strategic planning and visioning services, for which the city paid the consultants directly. The city paid SurveyMonkey on an annual basis using a purchasing card. The amounts paid for fiscal years 2019, 2020, and 2021 were \$288.00, \$336.00, and \$336.00, respectively. The Purchasing Director stated that the SurveyMonkey survey service was a simple annual subscription to use their platform, and that city staff prepared surveys as needed.

As shown above, Margate’s \$25,000.00 survey services contract was comparable to what Coral Springs and Fort Lauderdale have spent in recent years on similar services. However, without the proper competitive bidding provisions in the procurement code or even a procurement manual, the city has left itself open not only to justifiable criticism from the public, but also to the possibility of misconduct and gross mismanagement. The OIG notes that the survey services in Coconut Creek, Fort Lauderdale, and Coral Springs were all competitively solicited.¹⁷

Although the OIG found that the procurement did go through the city’s approval process, which included review by the city manager, the finance department, the city attorney, and twice by purchasing staff, it went against procurement best practices.

The City’s Procurement Code Leaves the City Vulnerable to Fraud, Waste, and Abuse

As discussed above in the section titled, “The Importance of Competitive Bidding,” it is a best practice for a governmental entity to require purchases above a certain threshold to be made through a competitive solicitation process. This is regardless of whether the purchases are for good or services.

The city’s purchasing code does not require staff to conduct a competitive solicitation, at any threshold, for the purchase of services other than certain professional consulting and design services not relevant to this inquiry.¹⁸ Although the code authorizes the purchasing manager to “promulgate procedures for the requisitioning of materials, services, supplies, equipment, construction and projects,”¹⁹ the procedures promulgated for the purchase of services are inadequate to protect the city against fraud, waste, and abuse. The Procurement Manager himself told the OIG that requisitions for purchases of services under \$50,000.00 were approved without much review, “if nothing seems improper.” While not indicative of

¹⁷ Coconut Creek purchased the strategic planning services through an informal request for quotations (RFQ) process, whereas Coral Springs and Fort Lauderdale purchased through formal requests for proposals (RFP). Note, Coconut Creek conducts the informal quotation process when it estimates the total bid amount not to exceed \$50,000.

¹⁸ We noted that staff sometimes competitively solicited quotes, bids, or proposals for services even though the code did not require it.

¹⁹ City Code §2-25(b).

misconduct, this approach is problematic, out of step with best practices, and under some circumstances could lead to gross mismanagement.

Based on our research, the majority of other cities in Broward County generally have procurement codes that specify procedures for competitive bidding on goods and services. For example,

- The City of North Lauderdale's code has quote requirements for both goods and services. Section 3-4 requires purchases of commodities, materials, supplies, or services of \$5,000.00 or more to have at least three competitive written quotes. Purchases of commodities or services of between \$10,000.00 and \$25,000.00 require at least three competitive written quotes and require pre-approval of the purchasing division and city manager. Finally, purchases or contracts for commodities or services that exceed \$25,000.00 must be based on a formal competitive solicitation and pre-approved by the city commission.
- The City of Tamarac has quote requirements for both goods and services. Its code contains a quotation threshold for all small market purchases. Purchases up to \$2,499.00 require a minimum of one quote, purchases from \$2,500.00 to \$4,999.99 require a minimum of three verbal quotes, purchases from \$5,000.00 to \$29,999.00 require a minimum of three written quotes, and purchases from \$30,000.00 and up require formal written quotes.²⁰
- The City of Pembroke Pines also has quote requirements for both goods and services. Its code states that all purchases that cost greater than \$5,000.00 but less than or equal to \$7,500.00 shall require at least three oral quotes. Purchases that cost greater than \$7,500.00 but less than or equal to \$25,000.00 shall require at least three written quotes. And finally, purchases that cost more than \$25,000.00 shall be based on sealed competitive solicitations.²¹

The City of Margate's code is concerning, as at the very least it leaves open the door for the appearance of favoritism and a lack of public confidence in the purchase of services.²² At worst, it opens the city up to something more nefarious such as fraud, waste, and abuse.²³

²⁰ City of Tamarac Procurement Code, Art. V, sec. 6-147.

²¹ City of Pembroke Pines Code of Ordinances Title III: Administration, Chapter 35: Procurement Procedures §35.25, §35.18.

²² For an example of how favoritism can lead to waste, see OIG final report 18-015-M, Misconduct and Internal Control Issues in City of Wilton Manors Procurements from a Motor Vehicle Repair Vendor. As described in the final report, a vendor whose owner had a social relationship with city staff was awarded work for years without competition, and the labor rate that the vendor charged the city increased by 47 percent over time. Once the city competitively solicited the work, the city secured a contract with a new vendor at a labor rate that was 56.25 percent lower than the prior vendor.

²³ For an example of a city employee's misconduct with procurements, including procurements for services, see OIG final report 19-009-M, Dania Beach Public Works Utilities Manager Misused His Position to Rig Procurements and Benefit Himself and Another. As noted in the final report, the employee was able to rig procurements and obtain kickbacks, special benefits, or gifts from vendors. The OIG notes that the employee had to work around the city's requirements for competitive bidding in his schemes. However, due to these requirements, his schemes were identified and unraveled. Without such requirements, the employee's various rigged procurements may not have been identified.

Finally, without competitive bidding, the public has no tool to gauge whether contracts for services were awarded equitably and economically.

Conclusion and Recommendations

The OIG has concluded its investigation into allegations that the city's award of a \$25,000.00 resident survey services contract to ETC may have violated the city's procurement code. The OIG did not substantiate this allegation. However, we did identify that the city's code, as applied to procurements of services, leaves the city susceptible to the potential for fraud, waste, and abuse.

Therefore, we recommend that the city review its procurement code in general against best practices and amend its language to, at a minimum, establish competitive bidding requirements for purchases of services. Although we noted the city does competitively solicit for services on occasion, a clear and objective policy as to the thresholds where the purchases of services require competition would help inspire public confidence that contracts are awarded equitably and economically.

The lack of a procurement manual—a guidance for proper procurement—in the city is also a concern and could result in the possibility that procurement actions may appear arbitrary and unfair. Thus, the city should consider establishing a procurement manual with more specificity and details than contained in the code. As the NIGP advises, a comprehensive procurement policy manual that lays out policies and applicable laws, “is critical to ensuring that procurement, agency staff, and all stakeholders follow the proper procedures and rules so all will have a clear and consistent understanding of the required regulations.”²⁴

cc: Cale Curtis, City Manager
David Tolces, Interim City Attorney

²⁴ Public Procurement Practice - Developing a Procurement Policy Manual, NIGP Principles and Practices of Public Procurement (2012).