



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

CONTRACT OVERSIGHT NOTIFICATION (2013-N-0004)

ISSUE DATE: JUNE 11, 2013

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

ITB No. 2013-12 Beach Cleaning, Maintenance and Beautification Services

SUMMARY

On February 14, 2013, the Office of Inspector General (OIG) received an anonymous complaint concerning the City of Delray Beach's ("City") competitive sealed bid solicitation for "Beach Cleaning, Maintenance and Beautification Services" ("Beach Cleaning"). According to the complaint, the City awarded the contract to the incumbent vendor who was not the lowest bidder.

The OIG found that the City issued a competitive sealed solicitation that was a "hybrid": using a combination of standard Invitation to Bid (ITB) and Request for Proposal (RFP) processes. As a result, the award – which went to the second lowest bidder – resulted in Questioned Costs of \$37,896 and Avoidable Costs of \$103,286.

Additionally, the OIG review identified the following concerns with the solicitation document: (1) bid protest language lacked clarity; (2) contract award factors lacked specificity; (3) evaluation factors did not have weights or points; and, (4) City staff failed to follow Invitation to Bid evaluation instructions.

BACKGROUND

On September 19, 2012, the City issued Invitation to Bid (ITB) No. 2013-12 for Beach Cleaning services and on October 17, 2012, the following annual bids were opened and recorded: (1) Beach Raker – \$57,000.00; (2) Universal Beach Service, Corp. – \$94,896.00; and, (3) The Beach Groomer – \$450,000.00.

On November 19, 2012 the City posted a document titled "Recommendation" stating its recommendation that the Beach Cleaning services contract be awarded to Beach Raker, the lowest bidder; however, on this same date the incumbent and second lowest bidder, Universal Beach Service, Corp. ("Universal"), sent a letter to the City Commission questioning the recommendation. On November 21, 2012, Universal sent a formal protest letter to the City's Purchasing Officer.

On January 2, 2013, David T. Harden¹, city manager, in a letter to Universal stated that he believed Universal's protest had merit. Mr. Harden presented four (4) options for resolution to the City Commission: (1) Reject Beach Raker's bid as non-responsive because they proposed an unwanted cleaning method; (2) Reject Beach Raker's bid as not being in the best interests of the City because it was unreasonably low; (3) Rebid the contract and incorporate sand sifting into the specifications; or, (4) Award the

¹ David T. Harden was hired as the City Manager on May 21, 1990 and retired on January 4, 2013.

contract to Beach Raker, as recommended by the City's Parks and Recreation Department.

On January 3, 2013, the City Commission discussed the Beach Cleaning services contract and the options provided by Mr. Harden. The ITB contained language providing the City Commission latitude when awarding the Beach Cleaning contract [Attachment A – Section (1)(a)]. During their discussions, two City Commissioners acknowledged they had conversations with a principal of Universal, while others stated they believed Beach Raker's bid was too low. Ultimately, the City Commission voted 5-0 to award the Beach Cleaning services contract to Universal.

The OIG notes that the City has established policies that contemplate situations where vendors submit "unreasonably" low bids. Specifically, the Purchasing Manual requires staff to determine if the City needs "special protection" in the form of a bid bond and/or performance bond [Attachment A – Section (2)(a)(b)(c)]. Furthermore, the ITB affords the City additional protection by instituting a "probationary period" of sixty (60) days to evaluate vendor performance [Attachment A – Section (1)(b)].

FINDINGS

FINDING (1):

The Bid Protest language in the solicitation lacks clarity

ITB Solicitation Language:

ITB section titled, "General Conditions, Instructions, and Information" contains paragraph "25", titled "Bid Protest", which states, in part: "The time for filing a protest is five (5) calendar days from the date bid results become **public information** [*emphasis added*]."

OIG Review:

On October 17, 2012, the City opened, publically announced and recorded the annual bids for the Beach Cleaning service contract. On November 19, 2012, the City posted a document titled "Recommendation" notifying the public of its recommendation to award the Beach Cleaning services contract. On this same date, the incumbent vendor sent a letter to the City Commission questioning the recommendation and submitted a formal protest letter, dated November 21, 2012, to the City's Purchasing Officer.

Because the current ITB protest language lacks clarity, a vendor who elects to file a formal protest could mistakenly believe it had to be submitted within five (5) days of October 17, 2012 – the date the bids were publically announced; rather than five (5) days from the City posting its "Recommendation" document (November 19, 2012).

FINDING (2):

The solicitation document used a combination of standard Invitation to Bid and Request for Proposal processes

ITB Solicitation Language:

ITB section titled, "Specifications" contains paragraph "B", titled "Evaluation", which states, in part: "The committee **shall also consider the inspection of the applicant's facilities; equipment, record keeping and employees**" [*emphasis added*] and, "Evaluation method – proposals will be evaluated in accordance with the criteria listed below:

- a) Proposed yearly cost to the City of Delray Beach
- b) Experience, qualifications and past performance of the Contractor, owners and officers and persons who will be directly involved managing the service **as described in this Request for Proposal Package** *[emphasis added]*.
- c) Equipment”

OIG Review:

The OIG found that the ITB appeared to be a “hybrid” solicitation, using a combination of standard ITB (lowest responsive and responsible bidder) and Request for Proposal (RFP) (evaluation criteria) processes. The ITB contains evaluation criteria that were not well defined, weighted or ranked as to their relative importance. By inserting language into the ITB that allowed the City to evaluate vague criteria, with no specified weights or points, in addition to price, the award of the Beach Cleaning services contract moved from being objective to subjective; thus, changing the intended purpose of an ITB which typically is awarded to the lowest responsive, responsible bidder.

The use of weights or points assigned to evaluation factors and sub-factors provide selection committees and proposers with a clear understanding of the basis for the award. No formal guidance was provided as to how one criterion was to be scored or valued, compared to other criteria. Moreover, the ITB did not provide guidance to the proposers outlining which criteria it considered most valuable. Selection results are less beneficial to proposers if they fail to identify scoring for the individual criteria. In addition, proposers are left to wonder why they did not receive an award and/or how they compared to other proposers who did. Providing useful feedback to proposers helps to create a larger pool of qualified candidates, which should enhance the economic and equitable procurement of services in the future.

Furthermore, the National Association of State Procurement Officials (NASPO) lists the following essential elements when awarding a contract under the competitive sealed bidding² method: (1) responsibility of the bidder; (2) responsiveness of the bid; and, (3) **the bid with the lowest price** *[emphasis added]*. NASPO continues by outlining the difference between the competitive sealed bidding method and the competitive sealed proposal³ method as being one where **the proposal method permits “contract award based on a variety of factors, including price”** *[emphasis added]*.

FINDING (3):

The City did not adhere to steps and processes outlined in the solicitation document

ITB Solicitation Language:

ITB section titled, “Specifications” contains paragraph “B”, titled “Evaluation”, which states, in part: **“Evaluation of proposals will be conducted by a committee of City Staff** *[emphasis added]* who shall evaluate all responsive applications received from applications meeting or exceeding the contract specifications based upon the information and references contained in the applications. The committee shall also consider the inspection of the applicant’s facilities; equipment, record keeping and employees. The committee will then make recommendations to the City Manager in the

² NASPO defines competitive sealed bidding as “Preferred method for acquiring goods, services, and construction for public use in which award is made to the lowest responsive and responsible bidder, based solely on the response to the criteria set forth in the IFB; does not include discussions or negotiations with bidders.

³ NASPO defines competitive sealed proposal as “A procurement method of obtaining goods, services and construction for public use in which discussion and negotiation may be conducted with responsible offerors who submit responsive proposals.

form of a list of proposed beach cleaning applicants. The City Manager shall then turn over his/her recommendations to the City Commission.”

OIG Review:

Since the ITB refers to establishing a committee to evaluate the proposals, the OIG requested documentation that the meeting was publically noticed; however, the City stated such a committee was not convened. Specifically, the City’s Director of Parks and Recreation advised: “...Ocean Rescue Superintendent and I discussed the 3 bids which were submitted and gave our recommendation to Mr. Harden. We did the background research ourselves including checking references. We did not have a committee; therefore there was not a public meeting.”

Finally, the Commission’s decision to award the Beach Cleaning services contract to the second lowest bidder appears to defeat the purposes of having an open competition for a public procurement. Section 287.001, Florida Statutes, contains the following public policy statement:

“The 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.”

RECOMMENDATION

Develop and issue solicitation documents consistent with the following elements:

1. **Protest Language** – Include specific language describing and naming the posting document as the instrument initiating the start of the protest period.
2. **Award of Contract** – Determine the factors, on which contract award is to be based, with sealed bids contingent on bidder responsibility, responsiveness and **lowest price**; and proposals based on **evaluative factors** including price. Clearly state the awarding factors and method in the solicitation document.
3. **Evaluation Factors** – Include evaluation factors, and sub-factors, weights and points.
4. When procuring goods and services the City should adhere to its established steps and processes within the solicitation document and ensure staff/evaluation committee members follow those steps.

RESPONSE FROM MANAGEMENT

On June 10, 2013, Mr. Louie Chapman Jr., City Manager, submitted a response to the OIG recommendation that stated the City “has implemented the recommended corrective action.”

The complete response is included as Attachment B.

QUESTIONED / AVOIDABLE COSTS⁴

Questioned Costs: \$37,896

Avoidable Costs: \$103,286

ACKNOWLEDGEMENT

The Inspector General's Contract Oversight staff would like to extend our appreciation to the City of Delray Beach's management for the cooperation and courtesies extended to us during the contract oversight process.

This report is available on the OIG website at: <http://www.pbcgov.com/OIG>. Please address inquiries regarding this report to Joe Doucette, Chief of Operations, by email at inspector@pbcgov.org or by telephone at (561)233-2350.

⁴ Please see www.pbcgov.com/OIG for description

ATTACHMENT A**Section 1 – Invitation to Bid No. 2013-12****a. Award of Contract**

“The City of Delray Beach reserves the right to accept any Bid or combination of Bid alternates which, in the City’s judgment will best serve the City’s interest, reject any and all Bids, to waive any and all informalities and/or irregularities, and to negotiate contract terms with the Successful Bidder and the right to disregard all non-conforming, non-responsive, unbalanced or conditional Bids. The City reserves the right to reject any or all Bids, or any part of any Bid, waive any informality in any Bid, and to award the purchase in the best interest of the City.” (ITB, page 4)

b. Performance Probation Period

“The successful awardee will immediately enter into a sixty (60) day probationary period upon contract award. During this time the awardees’ performance will be closely scrutinized by City staff. If the awardees’ performance fails to consistently meet standards specified within the bid, his contract will be promptly cancelled. If his performance is acceptable, then he will be also notified and the contract will extend through the expiration date given in this bid. The City has the right to terminate the contract during the probationary period with or without cause, and this right shall be solely at the discretion of the City.” (ITB, page 26)

Section 2 - Purchasing Manual⁵**a. Section XII Bids and Proposals**

“Formal (sealed) bids and proposals are the most effective procedure for soliciting competitive prices from vendors in the public (governmental) purchasing sector.” Subsection (1) (A) Purpose of Bid: “Is there a necessity for a special protection for the City through bonds and insurance?” (Purchasing Manual, page 33)

b. Section XII (1) (F) Bid Bond

“Bid bonds protect the City from erroneous or deliberate low bids which the vendor has no intention of honoring. Should he fail to enter into a contracts, the bid bond is forfeited.” (Purchasing Manual, page 36)

c. Section XII (1) (F) Performance Bond

“This bond is a surety instrument guaranteeing that the vendor will perform according to the terms of the contract, and is generally in an amount of 100% of the bid. This bond affords protection from non-performance and incompleteness of major contracts, the effects of which would result in considerable injury to the City. Should the vendor default, the bond is cashed and the City may then utilize the funds to complete the contract with another vendor.” (Purchasing Manual, page 36)

⁵ City of Delray Beach Purchasing Manual, December 20, 1991

CITY OF DELRAY BEACH



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June 10, 2013

Mr. Joe Doucette
Chief of Operations
Office of Inspector General
P. O. Box 16568
West Palm Beach, FL 33416

Subject: Contract Oversight Notification - ITB No. 2013-12

Dear Mr. Doucette:

The City of Delray Beach acknowledges the recommendations from the Office of Inspector General as it relates to Contract Oversight Notification 2013-N-0004 regarding the City of Delray Beach's Invitation to Bid (ITB) 2013-12 and has implemented the recommended corrective action.

Sincerely,

Louie Chapman, Jr.
City Manager

LC:jw