



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

MANAGEMENT REVIEW CASE NUMBER: 2012-0021

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

EXECUTIVE SUMMARY

The Office of the Inspector General (OIG) received an anonymous complaint alleging that the City of Delray Beach (the City) Commission disregarded procedures outlined in Request for Qualifications (RFQ) #2012-06, which solicited for engineering consulting services¹ for a Capital Improvement Project in October 2011. The complaint indicated that the City's Evaluation Committee² scored, ranked and selected the top five firms for presentation to the City Commission. According to the complaint, City Commissioner Jay Alperin recommended that Craig A. Smith & Associates, Inc. (CAS), the 15th ranked firm, be considered for a contract award, in addition to the top five ranked firms, because of CAS' purported 3D ground penetrating radar technology.

The complaint also indicated that between November 12, 2011 (the day after the Evaluation Committee's rankings were made public) and December 13, 2011 (when CAS was added to the selected firms), CAS Consultant Marie Horenburger violated the RFQ's Cone of Silence.

The OIG review found that the City Commission failed to follow the criteria as set forth in RFQ #2012-06 for engineering services. City staff created RFQ #2012-06 and the City's Evaluation Committee subsequently evaluated RFQ #2012-06 and selected the top five firms based on the criteria contained within the RFQ. In addition to the top five ranked firms, the City Commission added CAS (the 15th ranked firm) to be considered for a contract award because of CAS' purported 3D ground penetrating radar technology, even though it was not a ranking criteria outlined in the RFQ. The City Commission subsequently voted unanimously to award contracts to the top five ranked firms selected by the Evaluation Committee, as well as awarding a 6th contract to CAS.

¹ The purpose of the RFQ was to "enlist engineering services on a continuing contract basis for the City of Delray Beach..." in varying disciplines including "civil, environmental, sanitary, storm water, traffic and traffic calming. The RFQ indicated that the City would be selecting a minimum of three firms (*in accordance with § 287.055, F.S., the Consultants' Competitive Negotiation Act*).

² According to Deputy Director of Public Utilities Victor Majtenyi, the Evaluation Committee was comprised of himself, City Engineer Randal Krejcarek, Assistant City Engineer William Grieve, Deputy Director of Construction Rafael Ballestro and Assistant Director of the Community Redevelopment Agency, (CRA) Jeffery Costello.

Although the City Commission has the authority to make the final decision on contracts of this nature, there is no apparent provision in either the RFQ itself, or the City's procurement policies, which permits the City Commission to do any of the following:

- Disregard the criteria outlined in the RFQ;
- Re-evaluate one bidder under different criteria; and
- Direct staff to award a contract to that bidder over the bids of ten higher ranked proposers who were not similarly re-evaluated and not awarded contracts.

Such conduct fails to foster an atmosphere of fair and open competition.

The OIG review also assessed whether CAS Consultant Marie Horenburger violated the RFQ's Cone of Silence between November 12, 2011 (the day after the Evaluation Committee's rankings were made public) and December 13, 2011 (when CAS was added to the selected firms). The OIG reviewed all actions pertaining to this RFQ and developed no evidence indicating that Ms. Horenburger violated the Cone of Silence.

ISSUES REVIEWED AND FINDINGS

Issue (1):

Although Request for Qualifications #2012-06 outlined five criteria used in ranking prospective bidders, the City of Delray Beach Commission disregarded the rankings and selected the top five bidders, as well as the 15th ranked firm, Craig A. Smith & Associates, Inc.

Governing Directives:

Selection Procedures, Section III and Section IV of Request for Qualifications #2012-06

Finding:

The OIG review found that the City Commission failed to follow the criteria as set forth in Request for Qualifications (RFQ) #2012-06 for engineering services. The City Evaluation Committee created and administered RFQ #2012-06 and selected the top five firms based on the criteria contained within the RFQ. The City Commission then added CAS (the 15th ranked firm) to be considered for a contract award, in addition to the top five ranked firms, because of CAS' purported 3D ground penetrating radar technology.

The OIG's review of RFQ #2012-06 revealed the following ranking criteria:

1. Firm experience in South Florida and with other municipalities.
2. Firm's personnel qualifications.
3. Firm's governmental experience.
4. Firm's approach to project management.
5. Firm's resources, personnel availability and commitment.

Based on the OIG's review of RFQ #2012-06, the following timeline was established:

- October 2, 2011:** RFQ Advertisement
- October 27, 2011:** Deadline for RFQ submissions
- November 11, 2011:** The City holds a public meeting to review and discuss the Evaluation Committee's rankings in the following order:
1. Mathews Consulting
 2. Kimley-Horn and Associates, Inc.
 3. Calvin, Giordano & Associates, Inc.
 4. Corzo Castella Carballo Thompson & Salman, P.A.
 5. Wantman Group, Inc.
- December 13, 2011:** City Engineer Randal Krejcarek presents to the City Commission its rankings
- City Commissioner Jay Alperin recommends that a contract be awarded to CAS based on their claim to have exclusive rights/use of 3D technology. CAS, the 15th ranked firm, is then added to the list of engineering firms to be awarded a contract.
- January 17, 2012:** Approval by the City Commission to award contracts to the top five ranked firms chosen by the Evaluation Committee, as well as the 15th ranked firm recommended by Mr. Alperin.

Statement of Rene Mathews, President of Mathews Consulting

Ms. Mathews recalled submitting a proposal for her firm in response to the City's RFQ #2012-06 for a Capital Improvement Project (CIP) in October 2011, in which her firm was subsequently ranked 1st. Ms. Mathews indicated that there were five ranking criteria, which included personnel experience, overall firm qualifications, and experience with the City; however, technology was not one of the included ranking criteria. Ms. Mathews stated that the City Commission recommended that in addition to the top five firms selected by the Evaluation Committee, CAS be added to the list of firms that would be awarded a contract. According to Ms. Mathews, the City Commission's decision was based on CAS' purported 3D technology. Ms. Mathews stated that although her firm does not use similar technology as CAS, her firm subcontracts with a company that produces similar results, but again Ms. Mathews reiterated that technology was not a ranking criteria outlined in the RFQ.

It is noted that the 2nd and 4th ranked firms (Kimley-Horn and Associates, Inc. and Corzo Castella Carballo Thompson Salman, P.A.) provided no pertinent information during their interviews with the OIG. The 3rd ranked firm (Calvin, Giordano & Associates, Inc.) declined to be interviewed by the OIG.

Statement of Brian LaMotte, Senior Project Manager of Wantman Group, Inc.

Mr. LaMotte recalled submitting a proposal for his firm in response to the City's RFQ #2012-06 for a CIP in October 2011, in which his firm was subsequently ranked 5th. Although Mr. LaMotte was unable to recall the specific ranking criteria listed in the RFQ, ground-penetrating technology was not included. According to Mr. LaMotte, Mr. Alperin specifically expressed his support of CAS' claim to exclusive 3D technology and encouraged other City Commissioners to consider CAS. Mr. LaMotte explained that his firm's technology provides a different approach than CAS, but the end results are the same for ground penetrating radar. Mr. LaMotte stated that he did not recall prior selection processes in which a company progressed from a lower ranking (from 15th to 6th) and that he was "amazed" at this process.

Statement of Gene Schriener, President of Craig A. Smith & Associates, Inc.

Mr. Schriener recalled submitting a proposal for his firm in response to the City's RFQ #2012-06 for a CIP in October 2011, in which his firm was subsequently ranked 15th. Mr. Schriener indicated that the criteria for this particular RFQ included experience, references and approach. Mr. Schriener acknowledged that technology was not specifically listed as a ranking criteria, but believed that technology would be considered as an aspect of the qualifications criteria. According to Mr. Schriener, CAS utilized a unique and exclusive technology, referred to as 3D tomography, and included that in their proposal. Mr. Schriener stated that he did not know Mr. Alperin and could not speculate as to why CAS, the 15th ranked firm, was included in the contract award in addition to the top five ranked firms. Mr. Schriener further added that "staff can pick whoever they want; whenever they want, so, that's the way it is."

Statement of Randal Krejcarek, City Engineer

Mr. Krejcarek recalled the City Commission meeting in December 2011 where the Evaluation Committee released their rankings of the prospective firms. Mr. Krejcarek stated that as a member of the Evaluation Committee, he evaluated the firms based on the criteria contained in the RFQ, one of which was not technology. According to Mr. Krejcarek, his understanding of the reasons why the City Commission moved CAS from the 15th ranked position to the 6th position was because of a unique technology CAS reported to have, which identifies existing underground utilities. In a later conversation, Mr. Krejcarek also indicated that the City contracts with the selected firms based on the projects' needs compared with the consultants' expertise. Mr. Krejcarek further indicated that although technology was not an individual scoring factor in the RFQ, one of the RFQ's selection criteria was the firm's resources, which would have included whether their equipment could perform the work outlined.

Mr. Krejcarek stated that following the City Commission's meeting on January 17, 2012, CAS provided a demonstration of their technology to the Evaluation Committee; however, during the demonstration CAS' technology failed to locate certain items. Mr. Krejcarek indicated he attended the demonstration and reported the results to City Manager David Harden, which revealed the following pertinent information:

...The radar did miss two existing sanitary pipes (east-west pipes from MH's #20 & 19). The radar also missed an existing 16" force main that runs parallel to and approximately four feet east of Venetian Drive centerline. Utilizing this technology can be an aide when performing surveys for utility projects, but based on the information presented above, and in Table 1 below, standard surveying techniques, including soft digs should be utilized to verify location, depth and material type of existing utilities. Craig A. Smith & Associates agreed that the use of RT is just one tool in the surveying toolbox and should not be solely relied upon for locating existing utilities.

Statement of William Grieve, Assistant Engineer

Mr. Grieve recalled RFQ #2012-06 being prepared by the City for a CIP in October 2011. According to Mr. Grieve, the City was looking for engineering consultants to administer those CIP projects with qualifications including years of experience in operations and years of experience with government/municipalities. Mr. Grieve stated that technology was not a criteria for selection, but added that it may have been a minor consideration. Mr. Grieve stated that although the technology CAS offered was impressive, the City did not need that type of equipment for general projects, and that the only time he could project a need for this type of equipment was for a project that was under a time restraint at a busy intersection containing multiple utilities. Mr. Grieve stated that CAS provided a demonstration (February 16, 2012) of their technology for City engineers in a barrier island field. According to Mr. Grieve, CAS' technology detected some of the utilities, but the images were not clear.

Statement of Rafael Ballestro, Deputy Director of Construction

Mr. Ballestro recalled the City Commission meeting in December 2011 where the Evaluation Committee released their rankings of the prospective firms. According to Mr. Ballestro, technology was not a criteria for consideration. Mr. Ballestro stated that the City Commission decided to add CAS because "someone" on the City Commission was convinced that CAS' technology was the best for underground investigations. Mr. Ballestro stated that the reality is, is that technology is one of the many tools that a designer uses for exploring underground or above ground surfaces. Mr. Ballestro advised that 3D technology, that CAS claims to have, is not the absolute method as there are several other useful methods. Mr. Ballestro opined that CAS' equipment is a 2D radar system that records images from varying angles, which is then extrapolated through software and converted to 3D imagery. Mr. Ballestro's understanding was that CAS' technology was more expensive than other methods and noted that during CAS' demonstration to the City, their radar system "missed a couple of things," specifically a pipe.

Statement of Victor Majtenyi, Deputy Director of Public Utilities

Mr. Majtenyi recalled RFQ #2012-06 being prepared by the City for a CIP in October 2011, which did not include technology in the ranking criteria. Mr. Majtenyi stated that the Evaluation Committee found the City Commission's selection of the 15th ranked company (CAS) to be "peculiar" and did not know why the City Commission chose to do

so. Mr. Majtenyi further indicated that the Evaluation Committee was “surprised” when CAS was selected because the Evaluation Committee had already ranked the top five firms for selection. Mr. Majtenyi believed there was political motivation behind the City Commission’s decision to award CAS, the 15th ranked firm, a contract in addition to the top five ranked firms; however, he had no firsthand information to support his beliefs.

Statement of Jeffrey Costello, Community Redevelopment Agency Assistant Director

Mr. Costello recalled RFQ #2012-06 being prepared by the City for a CIP in October 2011; however, he was not present for any of the City Commission meetings and did not recall the ranking criteria. Mr. Costello opined that the process typically involves a firm’s personnel experience and experience with similar types of projects. Mr. Costello did not recall technology as being a specified ranking criteria.

Statement of Nelson McDuffie, Mayor

Mr. McDuffie recalled the City Commission meeting in December 2011 where the Evaluation Committee released their rankings of the prospective firms. Mr. McDuffie stated that he did not have any input regarding the RFQ criteria, but did not recall technology being included as a specific ranking criteria. Mr. McDuffie stated that he did not find it unusual that CAS, the 15th ranked firm, was moved to the 6th position after the selection process, nor was it unusual for the City Commission to suggest looking at firms that were not included in a selection. Mr. McDuffie added, “keep in mind we could have thrown all six of them out and said, ‘nope we won’t accept any of them and the City Commission could have picked them right then; I mean, we have the right to do that.” According to Mr. McDuffie, the City Commission chose to consider technology because of a previous project involving the rebuild of Miller Park. Mr. McDuffie stated that during that rebuild the contracted company failed to locate underground material, which led to multiple change orders to locate the material, resulting in additional costs to the City.³ Mr. McDuffie opined that in this case, CAS’ technology could have located such material.

Statement of Thomas Carney, Vice Mayor

Mr. Carney recalled the City Commission meeting in December 2011 where the Evaluation Committee released their rankings of the prospective firms, but added that he was not involved with the Evaluation Committee’s rankings. Mr. Carney stated that Mr. Alperin believed that CAS offered a unique technology and questioned the Evaluation Committee as to why technology was not a consideration in the ranking.⁴ Mr. Carney believed that other technologies had been an issue and that perhaps, CAS’ technology could be utilized to find underground material that would result in savings to the City.

³ Mr. McDuffie stated a contract for \$5.9 million was approved to rebuild Miller Park, however; underground material that was overlooked was later detected, resulting in an increased cost to the City of \$7.2 million. According to the OIG’s review, it was determined that the Miller Park rebuild project led to additional change orders and labor, resulting in a cost increase for the City. Mr. Krecjarek confirmed Mr. McDuffie’s statement regarding the rebuild of Miller Park that resulted in increased costs to the City.

⁴ According to the OIG’s review of the City Commission meeting on December 13, 2011, Mr. Krecjarek indicated that City Staff believed that the current methods employed by previous contractors were sufficient and that technology was not a critical factor.

Statement of Adam Frankel, Deputy Vice Mayor

Mr. Frankel “vaguely” recalled the City Commission meeting in December 2011 where the Evaluation Committee released their rankings of the prospective firms. Although Mr. Frankel was unable to recall the name of the firm, Mr. Frankel stated that “someone” suggested choosing a firm not originally recommended, because of the firm’s “new” and exclusive technology. Mr. Frankel stated that is has been his experience with voting on particular issues, suggestions can come from a City Commissioner based on his/her own personal experience or knowledge of the subject that may change the outcome.

Statement of Dr. Jay Alperin, former City Commissioner

Mr. Alperin recalled the City Commission meeting in December 2011 where the Evaluation Committee released their rankings of the prospective firms, but added that he did not have any input with the RFQ criteria. Mr. Alperin was initially unable to recall specifically if technology was a criteria and added, “I can’t imagine not having that.” Mr. Alperin confirmed that during the meeting, he recommended that CAS, the 15th ranked firm, be considered for a contract award, in addition to the top five ranked firms, because of CAS’ purported 3D ground penetrating radar technology. Mr. Alperin considered it “the responsibility of the City Commission to investigate [all submitted proposals]” and that he did so by requesting and reviewing all of the proposals after their initial rankings. Mr. Alperin indicated that while reviewing the rankings, he noticed discrepancies between some low scores⁵ compared to high scores for the same criteria, which caused him to begin reviewing all of the proposals. According to Mr. Alperin, during that review, he noticed a familiar name on a proposal, Craig Smith, which reminded him of someone he believed to have attended school with him. After making the determination that it was not the same person, Mr. Alperin stated that he continued to review CAS’ proposal at which time he noticed their description of underground radar technology, which he had previously seen featured on television and in a magazine. After being advised by the OIG that technology was not a criteria in the RFQ, Mr. Alperin stated that those programs indicated that underground radar technology could save cities and counties “millions of dollars,” and as such now questioned why technology was not a ranking criteria. Mr. Alperin believed that CAS “put something out there” that was very applicable and that it was “the job of the City Commission to make the decision, not the City Engineer.”

Statement of Angeleta Gray, City Commissioner

Ms. Gray recalled the City Commission meeting in December 2011 where the Evaluation Committee released their rankings of the prospective firms, but added that she did not have any input with the RFQ criteria. Ms. Gray confirmed that Mr. Alperin suggested that CAS, the 15th ranked firm, be considered for a contract award, in addition to the top five ranked firms based on CAS’ purported technology. According to Ms. Gray, she voted in favor of adding CAS because CAS’ technology was not offered in any of the other proposals. Furthermore, Ms. Gray believed that CAS’ technology

⁵ According to the OIG review, the initial scoring discrepancies involved one ranked firm that received a score of 4 points when the other firms received a score of 73, 79, 61 and 76 points respectively and another firm that received a score of 16 points, when the other firms received a score of 87, 63, 69 and 78 respectively. The second and corrected version of rankings indicated that the score of 4 points was changed to 46 points and the score of 16 points was changed to a score of 69 points.

would minimize change orders and “save us dollars.” Ms. Gray acknowledged that had the other firms included descriptions of their technology, the selection process could have been re-evaluated and/or the RFQ reissued.

Statement of David Harden, City Manager

Mr. Harden stated that although he sits on the City Commission, he does not have voting rights. Mr. Harden recalled the City Commission meeting in December 2011 where the Evaluation Committee released their rankings of the prospective firms, but added that he did not have any input with the RFQ criteria. Mr. Harden indicated that Mr. Alperin suggested CAS, the 15th ranked firm, be considered for a contract award, in addition to the top five ranked firms based on Mr. Alperin’s belief that CAS had a unique technology for locating underground utilities. Mr. Harden stated that he did not know whether or not other firms had similar technology but that City staff felt that other firms had similar, if not the same, technology as that of CAS. Mr. Harden stated that City staff made this known to the City Commission. Mr. Harden stated that he has never witnessed this type of re-ranking, but opined that “Dr. Alperin, in his own mind at least, was convinced that they did have a unique product and in order to avoid utility conflicts which can result in change orders that the Commission doesn’t like, that they should be given this work.”

Statement of Brian Shutt, City Attorney

Mr. Shutt advised that his role on the City Commission was to advise City Commissioners of any procedural issues that arise. Mr. Shutt stated that he has attended many City Commission meetings and was unable to recall the specifics of the City Commission meeting held in December 2011 related to RFQ #2012-06.

According to the OIG’s review of the December 13, 2011 City Commission meeting, Mr. Shutt suggested that if technology was going to be a factor in the City Commission’s decision, then his advice would be to either not accept any of the proposals or re-issue the RFQ, which included technology as a criteria, in order to give equal opportunity. When asked about his suggestion, Mr. Shutt was unable to recall his advice to the City Commission. Mr. Shutt further indicated that the City Commission had the right to make the final decision on this RFQ.

Issue (2):

Craig A. Smith & Associates, Inc. Consultant Marie Horenburger potentially violated Request for Qualifications #2012-06 Cone of Silence between November 12, 2011 and December 13, 2011.

Governing Directives:

Cone of Silence, Request for Qualifications #2012-06

Finding:

The OIG reviewed all actions pertaining to this RFQ and developed no information indicating that Ms. Horenburger violated the Cone of Silence.

According to the OIG's review of RFQ #2012-06, the following Cone of Silence was issued:

A "Cone of Silence" is in effect from the date/time of the deadline for submission of this RFQ and terminates at the time the Delray Beach City Commission awards or approves a contract, rejects all RFQs, or otherwise takes action, which ends the solicitation process.

Upon consultation with the OIG, City Attorney Brian Shutt opined that based on his review of the RFQ, the "Cone of Silence" in this particular instance, could be interpreted to have ended on December 13, 2011 (when the Evaluation Committee presented their rankings to the City Commission).

The OIG interviewed all of the City Commissioners (Mr. McDuffie, Mr. Carney, Mr. Frankel, Mr. Alperin and Ms. Gray), as well as the City Manager (Mr. Harden) and City Attorney (Mr. Shutt). None of the persons interviewed disclosed any information to indicate that they met with Ms. Horenburger in regards to this RFQ during its Cone of Silence. Furthermore, Ms. Horenburger advised the OIG that following the submission of the proposals and/or prior to the selection process, she did not have any communications with the City regarding this RFQ.

The OIG's review of electronic communications from September 1, 2011 through February 29, 2012, among pertinent City officials and/or Ms. Horenburger, did not develop any evidence indicating that Ms. Horenburger and/or City Commissioners violated the Cone of Silence.

RECOMMENDED CORRECTIVE ACTIONS

Based on the findings, the OIG recommends the following:

1. The City Commission should adhere to criteria set forth in an RFQ. In the event that the City Commission disagrees with such criteria or subsequent rankings, the City Commission should request City staff to re-issue the RFQ prior to an award.

ARTICLE XII, SECTION 2-427

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, on October 26, 2012, City Manager David Harden and Craig A. Smith & Associates, Inc. Consultant Marie Horenburger were provided the opportunity to submit a written comment, explanation, or rebuttal to the findings as stated in this Management Review within ten (10) calendar days (November 5, 2012).

- Mr. Harden's response (*attached in its entirety*) contained the following quoted information in pertinent parts:

Issue (1):

- **City Comment:** *The RFQ provided that the selection committee would base its rankings on the criteria listed in the RFQ. The RFQ also provided that a minimum of three firms would be chosen to enter into agreement with the City. The parameters of the RFQ were met and during discussion of this item at the December 13, 2011 Commission meeting, the Commission decided to add the Craig A. Smith firm to the list of firms chosen, which is their prerogative.*

OIG Response: 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** [emphasis added]."*

As previously disclosed in the Management Review, after a brief discussion at a public meeting, the City Commission voted to direct staff to award a contract to the 15th rated proposer after one member of the City Commission opined that that proposer had unique and useful technology. The OIG's review found no information to show that the RFQ's original criteria was even considered by the City Commission during its brief discussion, or that it went through the process of adjusting the ratings in the published criteria to give consideration to other proposers. Instead, the City Commission chose to add its own criteria solely for the 15th ranked proposer and award them a contract in addition to the top five proposers, but without any additional considerations to the 6th through 14th proposers.

- Ms. Horenburger did not provide a response to the OIG's report.

This Management Review has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.

CITY OF DELRAY BEACH



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October 30, 2012

Flora T. Butler
Office of the Inspector General
Investigations Section
P.O. Box 16568
West Palm Beach, FL 33416

Re: OIG Management Review Number: 2012-0021

Dear Ms. Butler:

The City of Delray Beach is submitting our response to the Office of Inspector General regarding management review number 2012-0021. One issue was stated in the management review; that the City Commission failed to follow the criteria as set forth in the Request for Qualifications (RFQ) #2012-06 for engineering services.

The RFQ provided that the selection committee would base its rankings on the criteria listed in the RFQ. The RFQ also provided that a minimum of three firms would be chosen to enter into agreement with the City. The parameters of the RFQ were met and during the discussion of this item at the December 13, 2011 Commission meeting, the Commission decided to add the Craig A. Smith firm to the list of firms chosen, which is their prerogative.

Please contact me if you have any further questions.

Sincerely,

David T. Harden
City Manager

DTH/gb