



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

CONTRACT OVERSIGHT NOTIFICATION (2014-N-0004)

Sheryl G. Steckler
Inspector General

ISSUE DATE: FEBRUARY 14, 2014

"Enhancing Public Trust in Government"

Beach Equipment Concession for the Publicly Owned Beach Invitation to Bid #2013-48

SUMMARY

On April 9, 2013, at a "Special/Workshop" meeting, the City of Delray Beach's new Commission (election March 2013) decided that the former city manager¹ did not have authority to renew the "Beach Equipment Rental Concession for the Publically Owned Beach-Rebid" (BERC) contract. As such, the new Commission decided it should have been awarded through an open, competitive and transparent procurement process. The new Commission's decision resulted in the City of Delray Beach ("City") publishing Invitation to Bid² (ITB) No. 2013-48 titled, "Beach Equipment Concession for the Publically Owned Beach" ("BEACH CONCESSION").

The decision to competitively procure the BEACH CONCESSION contract increased the City's annual concession fee (revenue) by approximately \$136,242³, or 53%, for the eighteen-month period between December 20, 2013 and June 14, 2015. However, the OIG identified the following findings with the BEACH CONCESSION solicitation: (1) the ITB solicitation document lacked sufficient "Background" and "Objectives and Purpose of the Solicitation" information; and, (2) the City lacked a documented procedure for preparing selection committee members to fulfill their responsibilities.

BACKGROUND

On January 30, 2009, the City issued the BERC contract Request for Proposal⁴ (RFP) for the three-year period of June 15, 2009 through June 14, 2012. The RFP stated that if approved by the City, the contract could be renewed for one additional three-year period. On June 2, 2009, the former Commission awarded the contract to Oceanside Beach Services, Inc. ("Oceanside") who proposed an annual concession fee (revenue) of \$170,000 (paid quarterly in advance). Oceanside's three-year proposal totaled \$510,000. In a letter dated March 11, 2012 to Oceanside, the "City Manager approved a three (3) year renewal" of the contract for the period of June 15, 2012 through June 14, 2015. The annual concession fee (revenue) remained at \$170,000.

¹ In April 2012, the former city manager renewed the BERC contract with Oceanside. This decision resulted in a complaint being filed with the OIG. The OIG's review determined that the BERC contract contained a provision allowing the City to renew it for "...one additional three (3) year period."

² According to ITB 2013-48, "[t]he terms "Invitation to Bid" (ITB) and "Request for Proposal" RFP are used interchangeably and both refer to ITB No. 2013-48."

³ For the eighteen-month period of December 2013 through June 2015, the City anticipates receiving concession fee (revenue) of \$391,242 from the BEACH CONCESSION contract. The anticipated concession fee (revenue) from the BERC contract was \$255,000; therefore, the City increased the concession fee (revenue) by approximately \$136,242 (\$391,242 - \$255,000).

⁴ According to RFP 2009-18, "[t]he terms "Invitation to Bid" (ITB) and "Request for Proposal" RFP are used interchangeably and both refer to RFP No. 2009-18."

On April 9, 2013, at a “Special/Workshop” meeting, the Commission discussed whether the former city manager had authority to renew Oceanside’s contract without approval from the Commission. After consulting with their city attorney the Commission determined that, the former Commission should have voted on the renewal decision.

On August 18, 2013, after multiple public meetings to develop the bid specifications, the City published an ITB for the BEACH CONCESSION contract. The ITB outlined the terms and conditions of the BEACH CONCESSION contract and included a minimum annual concession fee (revenue) of \$170,000 with a 5-year term. To be considered for the contract award interested vendors had to submit proposals to the City by September 17, 2013. The incumbent, Oceanside, was the only bidder.

Because the City received a single proposal, at the October 15, 2013 Commission meeting, the commissioners discussed rejecting Oceanside’s bid and reissuing the ITB. The Commission opted not to reissue the ITB and on November 19, 2013, awarded the BEACH CONCESSION contract to Oceanside. The BEACH CONCESSION contract has the following annual concession fee (revenue) payable to the City:

Year	Annual Concession Fee (Revenue)
One	\$ 252,415
Two	277,656
Three	305,422
Four	335,964
Five	369,560
Total	\$1,541,017

FINDINGS

FINDING (1):

The BEACH CONCESSION solicitation document lacked sufficient “Background” and “Objectives and Purpose of the Solicitation” information.

ITB Solicitation Language

The BEACH CONCESSION solicitation document provides the following “Purpose” statement: “City of Delray Beach, Florida (City) is seeking bids from qualified firms, hereinafter referred to as the Bidder, to provide beach equipment rental concession for the City’s municipal beach, in accordance with the terms, conditions, and specifications contained in the Invitation to Bid (ITB), [i]t is the intent of the City to award a single contract to the first ranked bidder responding to this ITB.”

OIG Review

The procurement process consists of three phases: Pre-Award; Award; and Post-Award. An important step in the Pre-Award phase is preparing the Scope/Statement of Work (SOW). According to the National Institute of Governmental Purchasing (NIGP) the SOW is defined as “a detailed description of the work which the purchasing jurisdiction wants the contractor to perform” and “must accurately reflect the specific

work requirement, what needs or is intended to be accomplished, milestones, benchmarks, deliverables, performance measures, etc.”⁵

A typical SOW includes “Background” and “Objectives and Purpose of the Solicitation” sections. According to the NIGP, in the “Background” section, it is beneficial for public entities to provide vendors with any relevant information that assists them in preparing a response to the solicitation document. Moreover, the “Objectives and Purpose of the Solicitation” section allows the public entity to describe the purpose, objectives and goals of issuing the solicitation document.⁵

Using the NIGP as a model, the OIG identified that the “Background” section of the SOW did not contain all of the information essential to assist vendors in preparing a viable proposal. The City should have considered including information such as, the number of beach visitors; the number of beach visitors renting beach equipment; current beach equipment rental rates; peak and off-peak beach season; and, the size/characteristics of the beach. This information is essential for potential vendors to determine the economic benefits of responding to the City’s solicitation. Moreover, the “Purpose” statement should have more clearly defined the City’s purpose, objectives and goals for issuing the solicitation document. For example, the City may have anticipated that offering visitors the ability to rent beach equipment would improve the local economy and enhance the City’s ability to attract tourists.

By failing to include all of the pertinent “Background” information and not clearly outlining the City’s vision for the beach equipment rental service, the City may have restricted the number of vendors submitting proposals and thereby defeating the purposes of having an open, competitive and transparent public procurement.

FINDING (2):

The City lacked a documented procedure for preparing selection committee members to fulfill their responsibilities.

Selection Committee

On September 23, 2013, the selection committee met to review the BEACH CONCESSION proposals. The City received a single proposal from the incumbent, Oceanside. In conjunction with the evaluation criteria, the selection committee began to discuss the relative strengths and weaknesses of Oceanside’s proposal. However, the selection committee was unable to score the proposal for the following two reasons: (a) Oceanside’s financial information, which is one of the scoring criteria, was not made available to the selection committee; rather, the selection committee was advised they could review the financial information by making individual appointments with the purchasing manager; and, (b) the selection committee did not understand what the bid specifications meant by requiring the bidder to provide “new” beach equipment. Therefore, on September 23, 2013, the selection committee failed to make an award recommendation.

On November 5, 2013, after individually reviewing Oceanside’s financial information, the selection committee reconvened. After the purchasing manager clarified the intent of the phrase “new” beach equipment, the selection committee discussed the relative strengths and weaknesses of Oceanside’s proposal. Then the selection committee

⁵ Pettijohn, Carol and Ken Babich. 2008. *Sourcing in the Public Sector*, 2nd ed. Herndon, Virginia: National Institute of Governmental Purchasing, Inc.

formally scored the proposal and recommended that the City award the BEACH CONCESSION contract to Oceanside.

OIG Review

The OIG attended the September 23, 2013 selection committee meeting and identified that the selection committee members were not adequately prepared to evaluate and score Oceanside's proposal. Specifically, the OIG observed that the selection committee: (a) did not fully understand the evaluation process; (b) did not understand the meaning of the term "new" beach equipment as stated in the bid specifications; and, (c) were not provided Oceanside's financial information.

The State of Florida, Department of Management Services, publishes a "Guidebook to Public Procurement"⁶ that details current procurement practices. The Guidebook contains an array of information; however, of specific interest is Section 3.6, titled "Phase 5: Prepare the Evaluation Team". Contained therein the "Guidebook" recommends:

"The procurement officer or solicitation team should conduct an evaluation team preparation meeting with all prospective members of the evaluation team. The purpose of the evaluation team preparation meeting is instructive and provides a proper venue for the solicitation team to explain time commitments, statutory requirements and other administrative details. This meeting should also include a discussion and clarification of the evaluation criteria that are to be included as part of the solicitation documents, as well as an explanation of the Timeline of Events."

RECOMMENDATION

The City of Delray Beach should:

1. Include all relevant "Background" and "Objectives and Purpose of the Solicitation" information that assists vendors preparing sufficient responses to the solicitation document.
2. Develop a Policy/Procedure that ensures selection committee members are adequately prepared to fulfill their responsibilities. Selection committee members should be advised of, but not limited to, the following elements: (a) the evaluation process; (b) evaluation/sub-evaluation criteria; (c) the scoring process; and, (d) the scoring and recommendation process.

⁶ The Guidebook to Public Procurement can be located at: http://www.dms.myflorida.com/business_operations/state_purchasing

RESPONSE FROM MANAGEMENT

On February 13, 2014, Mr. Louie Chapman, Jr., City Manager, submitted a response to this Notification (Attachment A). Mr. Chapman stated:

“The City of Delray Beach does not disagree with the two recommendations of the OIG on the Beach Equipment Concession for the Publically Owned Beach. We think that the recommendations could improve the future of the City’s contracting process.”

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 Hank K. Nagel, Contract Oversight Manager, by email at inspector@pbcgov.org or by telephone at (561)233-2350.

ATTACHMENT A

Hank Nagel K.

From: Chapman, Louie [chapman@mydelraybeach.com]
Sent: Thursday, February 13, 2014 11:34 AM
To: Hank Nagel K.
Subject: Recommendations

The City of Delray Beach does not disagree with the two recommendations of the OIG on the Beach Equipment Concession for the Publicly Owned Beach. We think that the recommendations could improve the future of the City's contracting process.

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