



John A. Carey
Inspector General

**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**



Inspector General
Accredited

“Enhancing Public Trust in Government”

Contract Oversight Report

CA-2016-0047

Palm Beach Gardens - Design Build of New Golf Clubhouse

September 19, 2016



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**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**
**CONTRACT OVERSIGHT REPORT
(CA-2016-0047)**



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DATE ISSUED: SEPTEMBER 19, 2016

"Enhancing Public Trust in Government"

PALM BEACH GARDENS - DESIGN BUILD OF NEW GOLF CLUBHOUSE

SUMMARY

What We Did

The Office of Inspector General (OIG) Contract Oversight Unit reviewed the contract award process for the Design-Build of a New Golf Clubhouse solicitation issued by the City of Palm Beach Gardens (City).

What We Found

On October 30, 2015, during the course of the competitive selection process, the City's Selection Committee recommended Hedrick Brothers Construction Co. (Hedrick) as the most qualified firm for the project. However, after the negotiations failed to result in a contract with Hedrick, Sisca Construction Services, LLC (Sisca), the second-ranked proposer, was awarded the contract on March 3, 2016.

We found that the City did not record its negotiation strategy meetings during the negotiations with Hedrick and with Sisca as required by section 286.0113, Florida Statutes.

The public purpose for recording such meetings is to inspire confidence in the procurement process and minimize the appearance of favoritism. Recordings afford the public, any unsuccessful proposers, and the OIG the opportunity to

clearly understand the Negotiating Team's strategy and approach to the negotiations.

The City included information relating to the negotiation process in the Request for Proposals (RFP); however, neither the RFP nor the City's Purchasing Policies and Procedures Manual addressed the statutory requirement to record negotiation strategy meetings during the negotiation phase of competitive procurement. Written policies and procedures ensure consistency, effectiveness, efficiency, and transparency in the negotiation process.

What We Recommend

Our report contains one finding and two recommendations to assist the City in ensuring compliance with Florida Statutes and transparency with the contract negotiation and awarding process. We recommend:

1. The City record all team meetings at which negotiation strategies are discussed per requirements of section 286.0113, Florida Statutes .
2. The City include guidelines regarding the negotiation team process within its Purchasing and Procedures Manual ensure consistency, effectiveness,

efficiency, compliance with section 286.0113, Florida Statutes, and transparency in the negotiation process.

The City agreed with the recommendations and highlighted that the City has amended its Purchasing Policies and Procedures Manual on August 24, 2016.

BACKGROUND

The OIG Contract Oversight Unit reviewed the contract award process for the Design-Build of a New Golf Clubhouse solicitation (Solicitation No. RFP 2015-024GF) issued by the City.

On October 30, 2015, after a selection process that included vendor presentations and interviews with the proposers at a public meeting, the City's Selection Committee recommended that the City commence negotiations with Hedrick for the Design-Build of the New Golf Clubhouse (Project). **Attachment A** provides details of the Selection Committee's scoring and ranking of the proposals. The Selection Committee awarded Hedrick 460 out of 500 possible total points and scored Sisca with 458 points - a two-point difference - after evaluating them on 1) organization, structure, and philosophy; 2) references, experience, and performance; 3) qualifications of the professional staff; 4) design and approach to construction; and 5) guaranteed maximum price. The RFP provided that the maximum budget for the Project was \$4.6 million. Hedrick proposed \$4,564,144.15 for its original design, and Sisca proposed \$4,560,900 for its original design.

The City formed a Negotiation Team chaired by the Purchasing and Contracts Director that commenced negotiations with Hedrick, the vendor ranked highest by the Selection Committee. The Negotiation Team met on November 18, 2015, to develop a negotiation plan.

On December 11, 2015, the Negotiation Team held a recorded, face-to-face meeting with Hedrick and described the City's vision and requirements for the project and highlighted the level of commitment expected from Hedrick to complete the redesign of its original proposal. The issues to be negotiated included developing a design consistent with the City's vision, project scope, construction schedule, and price.

Following the face-to-face meeting, the Chair of the team and Hedrick continued negotiations via email through January 05, 2016. The issues discussed during those negotiations included the cart barn integration, the cost for the Project, the size of the event space, and the size of the second-floor kitchen. According to the records reviewed by this office, Hedrick agreed to some of the Negotiation Team's requests, including a commitment to redesign Hedrick's proposed concept for the Project to meet the City's vision.

Although Hedrick had submitted its original proposal for an amount below the project budget of \$4,600,000, reflected in the RFP, the Negotiation Team asked Hedrick to reduce its price offer even further. The parties were unable to reach an agreement regarding project scope and price.

On December 23, 2015, Hedrick notified the Negotiation Team Chair, that "...As the DBT [Design Build Team] is now off work for the holidays, we request that we resume on Monday January 4." Subsequently, on January 4, 2016, the negotiations resumed.

The Negotiation team requested a revised proposal incorporating the required inclusion of the cart barn and a Best and Final Offer (BAFO) from Hedrick.

On January 5, 2016, Hedrick responded to the City's request. The Negotiation Team Chair notified Hedrick that the response was not what was expected. The Negotiation Team met shortly thereafter to review the response from Hedrick and decided to formally terminate negotiations with Hedrick and move to the next proposer (Sisca). Before this decision was communicated to Hedrick, Hedrick requested a face-to-face meeting with all the members of the Negotiation Team. Subsequently, the Negotiation Team met again internally and decided to reject Hedrick's request to meet face-to-face and to end the negotiations with Hedrick. Consequently, the Negotiation Team Chair advised Hedrick of the Negotiation Team's decision and formally terminated the negotiation process.

On January 11, 2016, the Negotiation Team began negotiations with Sisca. The Negotiation Team met with Sisca and explained the City's vision for the project. Sisca made changes to its original design, such as reducing the project scope, and submitted a revised price offer.

On January 21, 2016, the Negotiation Team met with Sisca and requested a BAFO for the original project design with no changes. On January 22, 2016, the Negotiation Team accepted Sisca's BAFO of \$4,500,000 for its original design submitted with its response to the RFP. A contract was submitted to the City Council Meeting on March 3, 2016, as Resolution 22, 2016, and approved the same day by a vote of 5-0.

Although the Negotiation Team did not record any of its team meetings at which negotiation strategies were discussed, we found no evidence to suggest that either the City's Negotiating Team or the Purchasing Director had any intent to violate the law. Since this matter arose, the City has agreed that strategy meetings must be recorded and has updated its Purchasing Policies and Procedures Manual to state: "...All negotiating team meetings at which negotiation strategies are developed or discussed shall be recorded in accordance with Section 286.0113 Florida Statutes."

FINDING

FINDING (1):

The City did not record the Negotiation Team meetings at which negotiation strategies were discussed as required by section 286.0113, Florida Statutes (Florida Sunshine Law).

The Sunshine Law reflects Florida's commitment to openness in government.¹ All governmental entities in Florida are subject to the requirements of the Sunshine Law

¹ *Krause v. Reno*, 366 So. 2d 1244, 1250 (Fla. 3d DCA 1979).

unless specifically exempted.² In contrast to staff meetings convened for the purpose of mere fact-finding, meetings between members of advisory boards and negotiation committees who have been delegated decision-making authority, such as whether to reject or approve potential contract terms that will be recommended to the town council for approval, are governed by the Sunshine law.³ The legislature may create exemptions to the Sunshine law open meetings requirements provided that such law states with specificity the public necessity justifying the exemption and the law is no broader than necessary to accomplish the stated purpose of the law.⁴

On June 2, 2011, Governor Scott signed HB 7223 into law. This legislation, which relates to the Sunshine Law in the procurement context, expanded the Sunshine Law exemptions provided in section 286.0113, as follows:

(b)1. Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2. Any portion of a team meeting at which negotiation strategies are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(c)1. A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

2. The recording of, and any records presented at, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.
[Emphasis added]

Section 286.0113(2)(a)2. defines a “team” as “a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.” The phrase “negotiation strategies” is not defined in the statute.

When the OIG originally requested the recordings of its negotiation strategy meetings, City representatives responded there were no recordings for those meetings and that they did not believe recording the meetings was required by Florida law. Since that time,

² *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010).

³ *Port Everglades Authority v. International Longshoremen’s Association*, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995)(violation of Sunshine Law occurred when selection and negotiation committee excluded competing vendors from each other’s presentations); *Monroe County v. Pigeon Key Historical Park*, 647 So. 2d 857 (Fla. 3d DCA 1994)(advisory committee negotiated a lease agreement outside the Sunshine, but such violation was cured); AGO 94-21 (Meetings of a negotiating team having authority to negotiate on behalf of the City of Miami and which reports the final negotiations to the city commission for ratification and approval is subject to the Government in the Sunshine Law).

⁴ *Fla. Const. art. I, § 24(c)*.

the City has acknowledged that it did not comply with the recording requirement under section 286.0113. The City, however, states that it was only required to record the Negotiation Team meeting that took place on November 18, 2015, in which it initially met to discuss and develop an overall strategy for negotiation and that all subsequent meetings of the team were not negotiation strategy meetings

Based upon our review of the facts and our discussions with the City's staff, we do not agree with the City's position that discussions regarding negotiation strategies were limited to the initial meeting on November 18, 2015. The Negotiation Team met several times to discuss and devise a plan for responding to the vendors' offers, to reject or accept proposed terms, and to formulate counteroffers. Moreover, meetings held by teams or committees that have been delegated decision-making authority to reject or approve potential contract terms on behalf of the governmental unit are subject to Florida's sunshine law, unless specifically exempted. Those Negotiation Team meetings specifically exempted from the notice and minutes requirements by section 286.0113 should have been recorded. Those Negotiation Team meetings where decisions were made that were not specifically exempted by section 286.0113 should have been noticed to the public and minutes taken. The City did not exercise either of these options for several meetings during the negotiation process. Thus, we conclude that the City did not comply with Florida's Sunshine Law.

Although Florida Statute §287.001 applies to specifically defined "agencies", the Legislature has clearly recognized 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.

We reviewed the City's Purchasing Policies and Procedures Manual and did not find policies and procedures that govern the negotiation process. Although the City included information relating to the negotiation process in the Request for Proposals, neither the RFP nor the City's Purchasing Policies and Procedures Manual address statutory requirements to record negotiation strategy meetings during the negotiation phase of competitive procurement. Written procedures provide detailed, specific direction to personnel to ensure clarity, consistency and quality control of the negotiation process.

We are pleased that prior to the issuance of this Final Report, the City amended its Purchasing Policy and Procedures Manual to include the requirement that Negotiation Team meetings at which negotiating strategies are developed or discussed be recorded in accordance with Section 286.0113, Fla. Stat.

RECOMMENDATIONS

1. We recommend the City record all team meetings at which negotiation strategies are discussed per requirements of section 286.0113, Florida Statutes.
2. We recommend the City include guidelines regarding the negotiation team process within its Purchasing and Procedures Manual ensure consistency, effectiveness, efficiency, compliance with section 286.0113, Florida Statutes, and transparency in the negotiation process.

RESPONSE FROM MANAGEMENT

On September 16, 2016, we received the following response from the City Manager: "The City accepts the recommendations as set forth in the Final Draft of the above referenced report. On August 24, 2016, the City's Purchasing Policies and Procedures Manual was amended in order to incorporate same." **(Attachment B)**

ACKNOWLEDGEMENT

The Inspector General's Contract Oversight staff would like to extend our appreciation to the City of Palm Beach Gardens 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 Dennis L. Yeskey, Contract Oversight Manager, by email at inspector@pbcgov.org or by telephone at (561) 233-2350.

ATTACHMENTS

“A”

On August 21, 2015, the City issued RFP 2015-024GF for the Design Build of a New Golf Clubhouse (Project), which required the receipt of the proposals by September 25, 2015. The City received proposals, all prior to the deadline, from five vendors as follows: Anatom Construction Company, Emerald Construction Corporation, Hedrick Brothers Construction (Hedrick), Co., Sisca Construction Services, LLC (Sisca) and Trillium Construction, Inc.

The Purchasing Department reviewed the documentation submitted with the five proposals and determined that all the submittals were responsible and responsive and referred them to the selection committee for further evaluation⁵. The City formed a selection committee for the purpose of reviewing the submissions and making a contract award recommendation if the negotiation process was successful. This selection committee was comprised of the following City staff members: Purchasing and Contracts Director acting as Committee Chair⁶, Assistant to the City Manager, Director of Unified Services, P.E.⁷, Finance Administrator, City Engineer, P.E., and Planning and Zoning Director.

The selection committee reviewed all the proposals and observed the oral presentations by the proposing firms. On October 30, 2015, the selection committee met, completed their evaluation, and scored and ranked the proposals as follows:

Ranking *										
Selection Committee Members	Organization, Structure, and Philosophy		Reference, Experience, and Performance		Qualifications of the Professional Staff		Design and Approach to Construction		Guaranteed Maximum Price	
	Hedrick	Sisca	Hedrick	Sisca	Hedrick	Sisca	Hedrick	Sisca	Hedrick	Sisca
Committee Members										
Elicia Sanders	10	9	25	24	24	24	20	18	18	19
Ansley Marr**	10	10	25	25	25	25	10	15	15	15
Allan Owens**	10	9	25	24	25	24	17	19	18	18
Todd Engle**	8	9	23	23	22	23	17	18	18	18
Natalie Crowley	8	8	25	23	24	24	20	16	18	18
Total Points	46	45	123	119	120	120	84	86	87	88

⁵ Responsible means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability, which will assure good faith performance. Responsive means a bid, which conforms in all material respects to the Invitation for Bids (Both definitions came from the American Bar Association - Model Procurement Code)

⁶ The Chair functioned as a non-voting member

⁷ P.E. is the abbreviation for Professional Engineer licensed through the Florida Board of Professional Engineers.

* Ranking based on individual scoring of the Selection Committee members.

**Also members of the Negotiation Team

The results of the voting generated the following ranking:

Rank	Proposer	Total Points
1	Hedrick Brothers Construction Co.	(460 points)
2	Sisca Construction Services, LLC	(458 points)
3	Anatom Construction Company	(423 Points)
4	Trillium Construction, Inc.	(379 Points)
5	Emerald Construction Corporation	(336 Points)

Based on the scoring results, the Selection Committee recommended that the City begin negotiations with Hedrick. All the Selection Committee actions were taken at publicly noticed meetings.

“B”

John Carey A.

From: Ron Ferris [rferris@pbgfl.com]
Sent: Friday, September 16, 2016 11:41 AM
To: John Carey A.
Cc: Max Lohman; Km Ra
Subject: Contract Oversight Report CA-2016-0047

John,

The City accepts the recommendations as set forth in the Final Draft of the above referenced report. On August 24, 2016, the City's Purchasing Policies and Procedures Manual was amended in order to incorporate same.

Warm Regards,

Ron

CITY OF PALM BEACH GARDENS E-MAIL DISCLAIMER: PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from local officials regarding city business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.