



**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**

**CONTRACT OVERSIGHT OBSERVATION
(2012-O-0001)**

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

Date: April 20, 2012

To: Joseph LoBello, Juno Beach Town Manager

From: Sheryl G. Steckler, Inspector General 

Subject: Juno Beach's Contract Negotiations for Waste Management Services

In an effort to be proactive and transparent, the Juno Beach Town Manager requested OIG staff's attendance at the April 11, 2012 Town Council meeting where the decision was made to continue negotiations with Waste Management, Inc. for solid waste and recyclable collection services.

The Town originally entered into a five year franchise agreement (Ordinance No. 273) with Nichols Sanitation¹ in 1984 for solid waste services. The agreement language allowed an extension(s) for unlimited five year terms. During the past 28 years, the Town has renewed the franchise agreement five times (one extension for approximately five months and one for eight years²), with the current contract extension terminating on September 30, 2012. It is noted that if the contract were extended for more than two years, it would violate Section 180.14 Florida Statutes that limits franchise agreements to no more than 30 years. However, the Town represents that it is not extending the existing agreement; rather, it is negotiating a new agreement with Waste Management, Inc. and intends to adopt an ordinance incorporating the new agreement and awarding a new franchise for the collection of solid waste and recyclables for a term of five years.

Two issues arose during the Town Council's discussion of the matter which may have been significant in their decision to avoid a competitive procurement and continue negotiations with Waste Management, Inc. The first was the perception that Waste Management, Inc. has been providing the Town with high quality and responsive service, and the second was concerns as to whether the Town's staff was capable of managing a Request For Proposals (RFP) of this magnitude.

¹ Nichols Sanitation merged with Waste Management in July 2005.

² Contrary to language in the original contract that allowed for unlimited five year extensions, Town Ordinance No. 513, April 1999, extended the contract for an additional eight (8) year term.

Regarding the first issue, as the Inspector General pointed out to the Council, the Town is not required to issue an Invitation to Bid under which the contract would automatically be awarded to the lowest bidder. Instead, the Town can issue an RFP which gives as much or more weight to quality of service as price. It is noted that a representative from another solid waste company articulated their interest in competing for the contract.

As to the second issue, while the Town Manager did admit to never having issued an RFP of this magnitude, he did articulate a willingness and an ability to do so. Moreover, countless other cities have issued such RFPs and many are likely to be willing to share their format, procedures, and experiences with the Town.

Even though these issues appeared to be factors in their decision to avoid a competitive procurement, Town Council member comments and their direction to staff to continue negotiating with Waste Management, Inc. indicated that a majority was not comfortable that the negotiations to date had produced the best possible offer.

Sound government procurement practices encourage the award of new contracts generally every five years, with some exceptions, through “full and open” competition. The 2000 Model Procurement Code by the American Bar Association states “Fair 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.”

Florida courts have long recognized that public policy in our state strongly favors competitive procurements for two principal reasons. First, competition enables taxpayers to obtain the best value for the lowest possible cost. Secondly, competitive procurements provide an opportunity for all businesses to fairly compete for public business. “The law is clear that competitive bidding statutes are designed to secure fair competition on equal terms for all bidders, among other things to avoid favoritism and to secure public improvements at the lowest reasonable cost to taxpayers.” Harris v. Sch. Bd., 921 So. 2d 725 (1st DCA 2006), citing Mayes Printing v. Flowers, 154 So. 2d 864 (1st DCA 1963).

The Town’s own purchasing policy typically requires a competitive procurement. At a minimum, it requires at least three verbal quotes for goods or services costing between \$500 and \$2,500. This particular procurement is for services which may cost \$500,000 per year, and which had not been competitively bid for the last 28 years. The exemption in the Town’s purchasing policy which would be used to avoid a competitive procurement in this case is for instances when “the Town Council otherwise determines that ...[a competitive procurement would not be] practicable or advantageous to the Town.” In this case, it is difficult to see how it can be determined, without a competitive procurement, that the Town would realize no benefit from a competitive procurement.

A response to this Contract Oversight Observation is not required. If you have any questions or comments, please contact Joe Doucette, Chief of Operations at 233-2350.