



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

CONTRACT OVERSIGHT NOTIFICATION (2015-N-0001)

John A. Carey
Inspector General

ISSUE DATE: MAY 11, 2015

"Enhancing Public Trust in Government"

City of Delray Beach Collection of Solid Waste and Recyclable Materials

SUMMARY

What We Did

In March, 2012, the Office of Inspector General (OIG) issued a Contract Oversight Notification 2012-N-0002 recommending that the City of Delray Beach (City) comply with its own purchasing policy and seek competitive procurement for solid waste collection and disposal services.

The City Commission rejected the OIG's recommendation and entered into a new no-bid 12 year contract with Waste Management of Florida, Inc. (Waste Management).

In May, 2013, a new City Commission brought this issue to Court. The judge determined that the contract had been entered into in violation of City Ordinances and declared the contract void; allowing the City to initiate a competitive procurement for these services.

The OIG followed the entire procurement process and evaluated the financial impact of the decisions made by the previous and new City Commissions on residents and business owners in the City.

What We Found

We found that the previous City Commission's decision to sign a new no-bid contract with the incumbent vendor, Waste Management in 2012 had a negative financial impact of approximately \$3 Million (questioned cost¹) on the residents and business owners in the City.

We found that the new City Commission's decision to challenge that contract and initiate a competitive procurement will result in approximately \$9 Million in avoidable cost² (savings) over the next 6 year period for residents and business owners in the City.

The City concurred with our findings and recommendation.

¹ Under Inspector General Guidelines these costs are termed "questioned costs." Questioned costs can include costs incurred pursuant to a potential violation of a provision of law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds, and/or a finding that such costs are not supported by adequate documentation, and/or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable in amount. As such, not all questioned costs, as in this case, are indicative of potential fraud.

² Avoidable costs are dollars an entity will not have to expend, and/or the increase in revenue, over the six year contract period following the issuance of the OIG report, if the OIG's recommendations are implemented.

BACKGROUND

This report is a follow up to Contract Oversight Notification 2012-N-0002, in which the OIG advised the City of Delray Beach that its own policies required the City to engage in a competitive procurement for a new solid waste collection and disposal contract. The City Commission rejected the recommendation of the OIG and agreed to enter into a new 12 year no-bid contract with Waste Management that was executed on September 27, 2012.

On May 14, 2013, a new City Commission engaged an independent law firm to advise it on the status of its contract with Waste Management and its options. That law firm advised the City Commission that the contract had indeed been entered into in violation of the City's own policies, making it an illegal and void or voidable contract. The City Commission then retained the law firm to file a legal action to void the contract. The Court ultimately ruled that the contract had been entered into in violation of the City's own Ordinances, and declared it to be void. The City Commission was then able to engage in a competitive procurement for these services. The OIG followed this procurement process and the overall financial impact to the City.

FINDINGS

FINDING (1):

We estimate that by not competitively soliciting the waste collection services, the City cost residents and business owners an additional \$3 Million in waste collection charges for the period September 2013 to May 2015.

OIG Review

The OIG issued Contract Oversight Notification 2012-N-0002 (CON) on March 1, 2012 which recommended the City comply with its own purchasing policies and competitively solicit the solid waste collection services.

The City Commission rejected the OIG's recommendation and approved a new no-bid contract with Waste Management. The new contract became effective on September 27, 2012 (services commenced on October 01, 2012) and was effective through September 30, 2021.

A new City Commission engaged an independent law firm to advise it on the legal status of the contract. The City then filed a legal action to void the contract. The Court ultimately ruled that the contract had been entered into in violation of the City's own policies, and declared it to be void.

This enabled the City to initiate a competitive procurement for these services. As result of this competitive procurement, the City contracted with Southern Waste Systems, LLC. (Southern Waste Systems) beginning on June 1, 2015.

To evaluate the financial impact of the previous City Commission's actions on the residents and business owners of the City, the OIG assumed that if the City had solicited bids in 2012 or 2013, the low bid would have been no higher than the bid it received and accepted in 2015. In making this assumption we considered a number of factors, including but not limited to:

1. The City of South Bay issued an Invitation to Bid for waste collection and disposal services in 2009, Southern Waste Systems won the bid, offering the City of South Bay a 61% reduction (\$41 to \$16 for curbside residential) from the cost in the previous contract. The Palm Beach County Solid Waste Authority used this contract to piggyback these services for the western communities of unincorporated Palm Beach County in January, 2013.
2. The OIG contacted Southern Waste Systems to inquire about the rates that they would have offered the City of Delray Beach in a hypothetical bid in 2012-2013, Southern Waste Systems represented to us that if an Invitation to Bid had been issued in 2012-2013, its bid would have been "pretty much the same if not identical". To support this claim, Southern Waste Systems noted that the disposal fee which the Solid Waste Authority charges collectors of refuse, a significant component of their cost which they cannot control, had not changed over that period.

Table 1

Compares the total charges by Waste Management from September, 2013 through May, 2015 to the total charges that the City may have received by competitively bidding the solid waste contract in 2012 - 2013.

Table 1			
From October 2013 to May 2015			
Finding 1	Total Time (Months)	Total Charges by Waste Management (*)	Total Charges by Southern Waste Systems (*)
	19.89	\$ 15,080,830	\$ 12,005,287
Questioned Cost			\$ 3,075,543

* Rates have not been indexed for inflation because the same index will be applied to both values. Also total charges were rounded to whole dollars.

The \$3 Million is considered a Questioned Cost because the City was found to have violated its purchasing policies.

FINDING (2):

By competitively soliciting waste collection services, the City avoided approximately \$9 Million in waste collection services costs for the residents and business owners of the City for the period of June 2015 to September 2021.

OIG Review

On October 5, 2014 the City issued a Request for Proposal (RFP) No. 2014-38 "Request for Proposal for the Collection of Solid Waste and Recyclable Materials." Five companies submitted proposals. Upon completion of the vendor selection process the City selected Southern Waste Systems and directed staff to prepare a contract.

The contract with Southern Waste Systems commences on June 1, 2015 and expires on September 30, 2021. The contract also provides one year renewal options, not to exceed five years.

The OIG compared rates contained in the Waste Management contract to the rates in the Southern Waste Systems contract. The following table shows rates from June 01, 2015 to September 30, 2021.

Table 2

Compares the rates that would have been charged by Waste Management from June 2015 to September, 2021 versus the rates that the City ultimately received by competitively bidding the solid waste contract in 2014-2015.

Table 2				
From June 2015 to September 2021				
Finding 2	Time (Month)		Total Charges by Waste Management, Inc. per Month (*)	Total Charges by SWS, LLC per Month (*)
	06/01/15	09/30/21	\$ 760,459	\$ 616,676
	Total Charges for 76.04 Month		\$ 57,827,599	46,893,859
	Savings			\$ 10,933,741
	Total avoidable cost savings for the City (**)			\$ 9,024,710
	* Rates have not been indexed for inflation because the same index will be applied to both values. Also total charges were rounded to whole dollars.			

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** The \$9,024,710 avoidable cost represents the savings in today's dollars converted using the present value formula and the "bank prime loan" interest rate as determined by the US Federal Reserve.

As a result of this analysis the OIG determined that the City's decision in 2014 to competitively procure these services positively impacted the City by \$10.9 Million dollars in savings, which translates into approximately \$9 Million in actual future avoidable costs for the City and its residents and business owners.

Further, in this competitive procurement four firms including the incumbent submitted proposals with much lower rates than the City had accepted in its original no-bid contract. Therefore, the City would have saved taxpayers dollars with most of the proposals through the competitive process.

RECOMMENDATION

The City should continue to comply with its own purchasing policies and seek the benefits of an open and competitive procurement process whenever practical.

RESPONSE FROM MANAGEMENT

On May 8, 2015, the City Manager of the City of Delray Beach provided a response to the Notification (Attachment A). The City Manager **agreed** with our findings and recommendation and stated:

"I have reviewed your report and concur with your recommendations and will implement same. I would also like to indicate on behalf of the City of Delray Beach we appreciate the work that has been done on this matter and the savings that the City of Delray Beach has received as a result of your recommendations. And again, we concur with the findings of the report and agree with the recommendations contained therein."

QUESTIONED AND AVOIDABLE COSTS

Questioned Cost Total = \$3 Million

Avoidable Cost Total = \$9 Million

ACKNOWLEDGEMENT

The Inspector General's Contract Oversight staff would like to extend our appreciation to the City of Delray Beach 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.

ATTACHMENT A

CITY OF DELRAY BEACH



100 N.W. 1st AVENUE • DELRAY BEACH, FLORIDA 33444 • 561/243-7000



Mr. Dennis L. Yeskey
Contract Oversight Manager
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, FL 33416

May 5, 2015

**RE: Report Contract Oversight Notification 2015-N-0001
Collection of Solid Waste and Recyclable Materials**

Mr. Yeskey,

I have reviewed your report and concur with your recommendations and will implement same. I would also like to indicate on behalf of the City of Delray Beach we appreciate the work that has been done on this matter and the savings that the City of Delray Beach has received as a result of your recommendations.

And again, we concur with the findings of the report and agree with the recommendations contained therein.

If you have any questions or need any additional information, please feel free to contact this office.

Sincerely,


Donald B. Cooper
City Manager of Delray Beach

DC/sy

cc: Cary Glickstein, Mayor
Delray Beach Commission
Francine Ramaglia, Assistant City Manager
Jack Warner, Chief Financial Officer
Holly Vath, Chief Purchasing Officer

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