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Inspector General

OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY



Inspector General
Accredited

“Enhancing Public Trust in Government”

Contract Oversight Report

CA-2017-0119

OSBA Disparity Study

August 9, 2017

Insight – Oversight – Foresight



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OSBA DISPARITY STUDY

SUMMARY

WHAT WE DID

On June 6, 2017, a complaint was made to the Office of Inspector General about the way in which Palm Beach County awarded Mason Tillman Associates, Ltd (Mason Tillman) a contract in 2014 to conduct a Disparity Study for the County's Office of Small Business Assistance (OSBA).

The complainant alleged that during the Request For Proposal (RFP) process:

1. The County's RFP process was unfair and improper because it allowed Mason Tillman to offer more services in its proposal than other proposers;
2. The contract award to Mason Tillman was improper because the County agreed to pay for additional services; and,
3. The County did not go back to the other proposers and allow them to submit new/revised proposals for these additional services.

The complaint was referred to the Contract Oversight Division for review.

WHAT WE FOUND

We found no evidence that Mason Tillman's proposal offered additional services that exceeded or differed in scope from what was permitted by the RFP or that Mason Tillman was allowed to provide services that exceeded or differed in scope from what other proposers were allowed to propose.

We found no evidence that the County agreed to pay Mason Tillman for services that differed or exceeded the scope of what was offered in its original proposal. Finally, we found no evidence that the County allowed any proposer, including Mason Tillman, to change or revise its sealed proposal in any manner whatsoever after it was submitted to the County.

WHAT WE RECOMMEND

Through our review, we found that the County followed its policies and procedures relating to this procurement process; therefore, we have no recommendations.

BACKGROUND

In 1989, the United States Supreme Court ruled in *City of Richmond vs. J. A. Croson*, **488 U.S. 469 (1984)**, that local governments must satisfy the “strict scrutiny” standard when considering the use of racial classifications in the award of public contracts.

On October 3, 1989, the Board of County Commissioners (BCC) directed staff to negotiate a contract with the highest scored respondent to an RFP, MGT of America, to complete a disparity study. The study was completed on January 17, 1991, finding that there was significant underutilization of Minority/Woman-owned Business Enterprises (M/WBEs) and an established inference of discrimination against M/WBEs in the relevant marketplace for goods and services purchased by the County.

On February 28, 2002, a report was issued reviewing the M/WBE program from 1991-2001 and finding that most of the race, ethnic, and gender goals set by the County had been met. Based on the utilization and disparity information for County purchases alone, the County determined that it did not have a sufficiently strong basis in evidence to establish the necessary compelling governmental interest to continue a race and gender conscious program.

Accordingly, the County transitioned from a M/WBE program to a race and gender neutral, Small Business Enterprise (SBE) Program on October 1, 2002.

At the BCC meeting on December 3, 2013, a discussion ensued as to what would be necessary for the County to again implement a race and gender conscious contracting program. County staff advised the BCC that a new disparity study would need to be commissioned. If the disparity study proved a strong basis in evidence showing ongoing effects of past or present marketplace discrimination, and that the County had been either an active or passive participant in that marketplace discrimination, then the BCC could appropriately consider implementing a program with race and gender conscious elements and narrowly tailored to address the identified discrimination.

The BCC directed staff to prepare an agenda item to facilitate discussion regarding the commissioning of a disparity study. On February 4, 2014, the BCC deliberated and voted 6-1 to commission the disparity study.

The Purchasing Department issued RFP 14-071/LJ on June 26, 2014 on behalf of OSBA. The RFP established a Non-Mandatory Pre-Proposal Conference on July 8, 2014, and a proposal due date of July 28, 2014.

Two amendments were issued to the RFP dated July 24, 2014 and July 28, 2014. Amendment #1 extended the due date to July 31, 2014, provided vendors with the sign-in sheets from the Non-Mandatory Pre-Proposal Conference, and answered questions from vendors about the RFP. Amendment #2 revised the proposal due date to August 4, 2014, and provided answers to new vendor questions about the RFP.

Proposals were received from: Mason Tillman, MGT of America, Miller3, Griffin & Strong, and Colette Holt & Associates. Miller3 was deemed non-responsive for failing to submit a signed acknowledgement of Amendment #2. The remaining four proposals were selected for oral presentations, but Colette Holt & Associates withdrew its proposal from consideration prior to presentations. This left three proposals eligible for consideration: Mason Tillman, MGT of America, and Griffin & Strong.

On August 25, 2014, the remaining three vendors presented before the selection committee and were ranked: 1st – Mason Tillman, 2nd – MGT of America, and 3rd – Griffin & Strong.

The contract award was approved by the BCC on October 21, 2014, in the amount of \$749,995. The initial period of the contract was October 22, 2014 through October 21, 2016. On December 21, 2016, Amendment #1 was issued which extended the end date to March 31, 2017. Amendment #2 was issued on June 6, 2017, to extend the end date to December 31, 2017.

ALLEGATION

ALLEGATION (1):

Allegation: The County's RFP process was unfair and improper because it allowed Mason Tillman to offer more services in its proposal than other proposers.

Conclusion: The documentation and audio recordings reviewed by the OIG did not support the allegation.

Analysis: The proposal by Mason Tillman was substantially the same in format and content as the proposals submitted by MGT of America and Griffin & Strong. The proposals differed in the detail provided in explaining the proposed study methodology and project tasks. None of the three proposers offered services beyond the scope of the RFP.

A. Intent of RFP

The RFP document, #14-071/LJ was reviewed by this office.

As stated in ***Palm Beach County Ordinance 2-52, Purchases – Definitions***, a:

Request for Proposal ("RFP") means a solicitation used in the formal competitive proposal process to solicit sealed proposals for a good or service that is equal to or greater than the mandatory bid or proposal amount; where the scope of work or specifications may not be closely defined; and, where the evaluation is based on established criteria which may include, but is not limited to, price.

An RFP typically outlines overall requirements, but may include a few specific needs or requirements. Effective RFPs typically reflect strategy and objectives providing detailed insight upon which the vendors are able to offer their proposed “solution” to the public’s “need”.

Unlike the rigidity of a strict Invitation to Bid (ITB) where the specifications are exact and competition between responsive bidders is based solely on the lowest price, an RFP offers the vendors flexibility in preparing a proposal that demonstrates their competitive strengths and different service offerings. The public entity benefits from the knowledge, experience, and expertise of the vendors as evidenced by their unique proposal specifications/statement of work.

RFP #14-071/LJ reflected the overall objective of the requested services without any specific details as to how the work was to be performed. The vendor was responsible for outlining its proposed methodology for providing the services. Although the service offered by each vendor differed in enumerated tasks and methodology, none of the proposers offered services that exceeded or differed in scope from what was permitted in the RFP or exceeded or differed in scope from what other proposers were allowed to propose.

The RFP also stated that it was seeking “qualified and experienced consultants” possessing certain technical expertise or specialized skills:

1.2 PURPOSE OF THE PROJECT

The County is soliciting proposals from qualified and experienced consultants to conduct a study to determine if there is a disparity between the number of minority- and women-owned businesses that are ready, willing, and able to perform construction, professional services, and goods and services contracts and the numbers of these same business types who are actually participating in these same types of contracts with County; and, if so, whether such disparity can be attributed to discrimination.

The RFP specified five (5) areas for evaluation of the proposals and the award methodology. The experience of the firm, qualifications of the individuals, and the vendor’s proposed project approach/methodology represented 75% of the total scoring. Pricing only represented 10% of the scoring. The RFP provided that proposals would be evaluated using the following criteria:

2.18 EVALUATION CRITERIA

- | | |
|--|----------------------|
| 1. Experience/Qualifications
Background/References/
Key Personnel/Operations | Weight 40 % (40 pts) |
| 2. Project Approach/Methodology | Weight 35 % (35 pts) |
| 3. Price Proposal | Weight 10 % (10 pts) |

- | | |
|-------------------------------------|---|
| 4. <i>Small Business Enterprise</i> | <i>Weight 10 % (10 pts)</i> |
| 5. <i>Location</i> | <i>Weight 5 % (5 pts)</i>
<i>(100 pts)</i> |

2.19 AWARD OF CONTRACT

The award, if any, will be made to the responsive, responsible proposer whose proposal is considered to be the most advantageous to the County based on the Selection Committee's opinion after review of every such proposal including, but not limited to, price.

In addition to demonstrating their company's experience and qualifications for performing legally defensible disparity studies for governmental entities, the RFP required the vendors to submit project management and staffing plans, data collection methods, data reviews, and other study methodology necessary to measure utilization of M/WBEs in the County.

The RFP also stated:

3.8 ADDITIONAL INFORMATION

Information considered by the proposer to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Proposers are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

Section 3.8 provided that each vendor responding to the RFP had equal opportunity to provide additional information pertinent to the project but which was not specifically solicited in the RFP. As explained below, Mason Tillman did not identify any additional information in their proposal. Even if Mason Tillman had provided additional information in the initial proposal, Mason Tillman was not given an opportunity to provide additional information that exceeded or differed in scope from what other proposers were allowed to propose.

B. Mason Tillman's Proposal

The proposal submitted by Mason Tillman was reviewed by this office in comparison with the RFP document, RFP #14-071/LJ.

Section 3 of the RFP identified the Proposal Requirements while section 4 of the RFP contained the Scope of Work/Services:

- a. Experience/Qualifications/Background/References/
Key Personnel/Operations Information*
- b. Project Approach/Methodology Information*
- c. Location*
- d. Financial/Business Stability*

- e. *Price Proposal Information*
- f. *Business Information*
- g. *Amendments to the RFP*
- h. *Additional Information*

The proposal from Mason Tillman provided the required information for each section as specified in the RFP.

Mason Tillman responded to Section 3.1 of the RFP with thirty-nine pages of resumes, project lists, experience, and credentials for the firm, the individuals assigned to this project, and the subcontractors. Mason Tillman provided its Project Methodology in response to Section 3.2 of the RFP. Mason Tillman provided a Critical Component outline of nine tasks and incorporated the entire Section 4 to demonstrate how they would create a legally defensible disparity study:

Disparity Study: Critical Components

1. *Legal Framework*
2. *Contracting and Procurement Policies and Programs*
3. *Utilization Analysis*
4. *Geographic Market Area Identification*
5. *Availability Analysis*
6. *Disparity Analysis*
7. *Anecdotal Evidence*
8. *Race and Gender-Neutral Policies*
9. *Recommendations*

Mason Tillman's Price Proposal (Section 3.5), was very detailed and included a task list and a five-page breakdown of each task by named person and hourly rate.

Section 3.8 of Mason Tillman's response only included all the Appendix documentation required by the RFP, such as Resumes, Legal Documents, Insurance Certificates, Executive Summaries, and other required proposal forms.

After reviewing the proposal submitted by Mason Tillman, our office found no evidence that the company improperly offered additional tasks, requirements, costs or added services -- either optional or required -- beyond the basic disparity study requirements, as outlined, in the statement of work to the RFP.

C. MGT of America and Griffin & Strong Proposals

MGT of America and Griffin & Strong's proposals were also reviewed by OIG staff and compared to the requirements of the RFP and the proposal submitted by Mason Tillman to determine the ways in which they differed.

The Griffin & Strong and MGT of America proposal contained the same elements as the Mason Tillman proposal, and were about the same length at 300+ pages. All three

proposals followed the format specified by the RFP. Based on length and content, the significant sections of all three proposals were the resumes of key individuals, executive summaries from three sample disparity studies, a legal discussion of study defense cases, and references/qualifications of the firm.

The one major difference amongst all three proposals was the level of detail provided in the section regarding study methodology and project approach. The Selection Committee discussed the proposal content differences in the approach and methodology during their scoring deliberations.

The Griffin & Strong proposal had an abbreviated discussion regarding its study methodology. The discussion was in paragraph form and did not identify individual tasks. The proposal also did not include a specific discussion about the County's data and information systems, which would be used to conduct the study.

MGT of America's proposal included a lengthy discussion of methodology, and identified seventeen tasks for two phases, compared to fourteen tasks identified by Mason Tillman.

In reviewing the task descriptions, the listings from MGT and Mason Tillman were comparable. The significant difference between the three proposals was in the level of detail provided about the vendor's approach and methodology.

Mason Tillman's proposal had a detailed work plan with subtasks with pricing details and hours. The Selection Committee found the detailed task information provided by Mason Tillman useful in validating their pricing during evaluation discussions.

D. Pricing

In terms of pricing, the Mason Tillman proposal was the highest by about 29%.

Pricing Comparison	
	Total
Mason Tillman	\$ 749,995
MGT of America	\$ 533,025
Griffin & Strong	\$ 501,620

Per the RFP, the pricing category was only 10% of the overall evaluation score. Mason Tillman received the highest average score of 77.4, and was ranked first place by five of the seven Selection Committee members. MGT of America placed second with an average score of 74.5 and was ranked first place by two of the seven Committee members. Griffin & Strong placed third with an average score of 68.6 and received zero first place votes from the Committee members.

E. Selection Committee Meeting

OIG Staff reviewed the audio recordings of the three vendor presentations and the Selection Committee deliberations. During the proceedings, there were no negotiations conducted or any additions, revisions, and changes to any vendors' proposal.

Each vendor was allowed 30 minutes to present its proposal, followed by 30-40 minutes of Committee questions. Each presentation was substantially the same in format and content. Each vendor was provided with questions in advance from the Committee regarding the parts of their proposal that the Committee wanted the vendors to expand upon in their presentations.

In the instructions provided to the vendors and the Committee, the Purchasing Department reminded all parties that these are vendor presentations and "not an opportunity to add-to or modify proposals."

Overall the Committee concluded that all three vendors were qualified and able to conduct the study. They noted that some of the vendors had vastly different levels of experience in the number of disparity studies previously conducted. The Committee also noticed differences in the vendors' legal abilities, knowledge of case law, and the ability to defend the study or act as an expert witness. Finally, the Committee acknowledged that the proposal contents for the three vendors were similar, but all were vastly different in the level of detail provided in the proposal regarding approach and methodology.

The Committee scored the proposals without further discussions. The final tallied rankings were: 1 – Mason Tillman, 2 – MGT of America, and 3 – Griffin & Strong.

We found no evidence that Mason Tillman's proposal offered additional services that exceeded or differed in scope from what was permitted in the RFP or that Mason Tillman was allowed to provide services that exceeded or differed in scope from what other proposers were allowed to propose.

ALLEGATION (2):

Allegation: The contract award to Mason Tillman was improper because the County agreed to pay for additional services.

Conclusion: The documentation and evaluation of information did not support the allegation.

Analysis: The final contract submitted to the BCC for approval on October 21, 2014 (Agenda Item 6A-1), contained the same statement of work, contract terms and conditions as specified in the RFP. The contract contained the same pricing as in Mason Tillman's proposal. There is no evidence that the parties improperly negotiated a contract that exceeded the scope of the RFP.

The final contract document includes:

- a. Mason Tillman's company name and contact information, inserted where required.
- b. Mason Tillman's proposal, dated August 4, 2014, fully incorporated into the contract by reference.
- c. Exhibit A: Statement of Work, Section 4 of the RFP.
- d. Exhibit B: Mason Tillman's Proposal, dated August 4, 2014 (374 pages).

The vendor's proposal did not contain any exceptions or alterations of form to the contract document or any of the terms and conditions. The pricing in the contract is the same as proposed by Mason Tillman including identical tasks, subtask descriptions, named personnel, hourly rates, hours, and totals.

The final contract had no alterations to the pricing, study services, methodology, and tasks as proposed by Mason Tillman in their proposal. The final written contract shows no evidence of negotiations or changes from the RFP and proposal as submitted by Mason Tillman.

The pricing sheet in the proposal and the contract document contains the word "Revised" in the Appendix title. This is because the Pricing Sheet was "Revised" in Amendment #2 prior to the proposal submission date by the County to include a line item for an hourly rate proposal for the vendor's services as an expert witness and litigation support.

We found no evidence that the County agreed to pay Mason Tillman for services that differed or exceeded the scope of what was offered in its original proposal.

ALLEGATION (3):

Allegation: The County did not go back to the other proposers to submit new/revised proposals for these additional services.

Conclusion: The documentation verifies that the County did not request revised proposals from the other proposers. The County's conduct in not offering the other two proposers an opportunity to submit new/revised proposals was not a violation of the RFP or Purchasing Department policies and procedures.

Analysis: After opening the solicitation, the County neither requested changes to proposals nor did any vendor submit revisions to their proposals.

As discussed in Allegation 2, there is no indication that the County allowed Mason Tillman to offer services that exceeded the scope permitted by the RFP in either its original proposal, a revision to the proposal or final contract, or through negotiations after the proposal was submitted. We found no evidence that the County allowed any proposer, including Mason Tillman, to change or revise its sealed proposal in any manner whatsoever after it was submitted to the County, as specified in the RFP:

2.4 Late Proposals, Late Modified Proposals

Proposals and/or modifications to proposals received after the Deadline for receipt of proposals specified in the RFP Timetable (Section 1.7) are late and shall not be considered.

QUESTIONED COSTS

None.

RECOMMENDATION

During our review, we found that the County followed its policies and procedures; therefore, we have no recommendations.

RESPONSE FROM MANAGEMENT

The Office of Small Business Assistance was in agreement with the report.

ACKNOWLEDGEMENT

The Inspector General's Contract Oversight staff would like to extend our appreciation to Palm Beach County's Office of Small Business Assistance and the Purchasing Department 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>.