



OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

MANAGEMENT REVIEW CASE NUMBER: 2012-0018

Sheryl G. Steckler
Inspector General

"Enhancing Public Trust in Government"

EXECUTIVE SUMMARY

The Office of Inspector General (OIG) received a complaint regarding the City of Riviera Beach (the "City"), which identified the following issues:

1. The City of Riviera Beach Council failed to follow City procurement rules, as well as the criteria set forth in Request for Proposal (RFP) #246-09, in awarding a contract for solid waste services.
2. The City of Riviera Beach Council's requests for monetary donations deemed "community benefits,"¹ prior to the approval of the solid waste services contract, gave the appearance that the contract award was based on the amount of community benefits obtained by the City Council.

Finding (1): The OIG's review found that the City Council failed to follow City procurement rules, as well as the criteria set forth in Request for Proposal (RFP) #246-09, for solid waste services. City staff, to include the City Manager and City Attorney, followed appropriate City procurement rules and RFP #246-09; however, the City Council disregarded the RFP process and chose to award the contract to Waste Management, Inc. (WMI), the current provider, who had initially been ranked last by the City's Evaluation Committee.²

During the OIG's interviews, City Council members indicated that a bid protest by the third-ranked bidder, Southern Waste Systems, LLC (SWS),³ caused them to deviate from the RFP process. As such, they chose to hear oral presentations from bidders, after which the City Council re-ranked the bidders, with WMI now being ranked first. Although the RFP's language stated that "*Cost is not necessarily determinative in the award,*" a majority of the City Council members (when interviewed by the OIG) stated that "cost" was their predominant consideration in awarding the solid waste services

¹ According to City Resolution #63-11 (May 4, 2011), "community benefits" essentially provide discretionary funds to elected officials (City Council) for their own public purposes. "Public purposes include, but are not limited to, charitable events, not-for-profit organizations, or City functions or projects, including for example, contributions to the City's Scholarship Fund or the City's Housing Trust Fund."

² An Evaluation Committee is responsible for evaluating and scoring each of the bidders based on their submitted responses to an RFP. When utilizing the criteria outlined in the RFP, the Evaluation Committee ranked Waste Pro USA, Inc. first. According to RFP #246-09, the Evaluation Committee was Comprised of City Purchasing Director Benjamin Guy, then Assistant City Manager Gloria Shuttlesworth, then Finance Director Jeffrey Williams, then Public Works Director Vincent Akhimie and then Facilities Manager Brynt Johnson (Mr. Johnson is now the City's Public Works Director). Ms. Shuttlesworth, Mr. Williams, and Mr. Akhimie no longer work for the City.

³ SWS filed a bid protest on June 1, 2010, which resulted in some changes to the evaluations; however, those changes did not affect any of the Evaluation Committee's previous rankings.

contract. The City Council's decision to award the contract to WMI will result in additional costs to the City's residents and commercial establishments totaling **\$2,199,504.00** over the length of the contract (five-year period).

Finding (2): The OIG's review found that the request for monetary donations, in the form of "community benefits," prior to the award of the solid waste services contract, gave the appearance that the offer of community benefits by bidders would be a basis for the award of the contract even though community benefits were not specified, nor required in the RFP. Waste Pro, originally ranked first by the Evaluation Committee, included in its proposal a monetary donation, deemed "community benefits," in the amount of \$60,000.00 (per year). Information disclosed during the OIG review found that prior to the award of the contract, the City's Negotiating Committee,⁴ requested that WMI meet or exceed Waste Pro's \$60,000.00 community benefits offer. WMI agreed to contribute \$72,000.00 (per year) in community benefits.

Subsequently, during the February 2, 2011 City Council meeting (when the contract was to be approved), City Council member Cedric Thomas elicited, in addition to other contractual considerations,⁵ an increase in WMI's offer of community benefits to \$90,000.00. WMI agreed to the increase and then the City Council unanimously approved the award of the contract to WMI. It should be noted that during this same City Council meeting, two City Council members, the City Manager and the City Attorney expressed their disagreement with the request for additional community benefits, as well as the methodology used. The City Attorney commented that "[it gave a] perception of quid pro quo." Furthermore, WMI's own representative stated that WMI did not like the community benefits process (WMI would have preferred to make their contributions directly to charitable organizations in the community), but was not going to allow requests for community benefits to jeopardize the award of the contract to WMI.

A draft of this report was provided to the State Attorney's Office (SAO), in and for Palm Beach County, Florida. After its review, the SAO indicated that based on the information contained within this report, the matter should be handled administratively.

RECOMMENDED CORRECTIVE ACTIONS

Based on the findings in the OIG review, the following corrective actions are recommended:

1. Although the City Council has the ultimate authority to award contracts, in order to maintain an equitable process, the City Council should adhere to its own advertised evaluation criteria contained in the RFP. In the event that the City Council disagrees with such criteria or subsequent rankings, the City Council should consider restarting the process.

⁴ Following the Evaluation Committee's rankings, the information is forwarded to the City Council for approval of a bidder to enter into contract negotiations with the Negotiating Committee. According to City Public Works Director Brynt Johnson, the City's Negotiating Committee was comprised of himself, City Manager Ruth Jones, City Attorney Pamala Ryan, City Director of Purchasing Benjamin Guy, and City Finance Director Karen Hoskins.

⁵ These considerations included additional service-related matters.

2. In order to maintain impartiality and the integrity of a contract award process, it is recommended that the City implement the recommendation of the Palm Beach County Grand Jury regarding “discretionary funds” by eliminating requests and/or acceptance of funding similar to “community benefits” as part of the awarding of contracts.

ISSUES REVIEWED AND FINDINGS

Issue (1):

The City of Riviera Beach Council failed to follow City procurement rules, as well as the criteria set forth in Request for Proposal (RFP) #246-09, in awarding a contract for solid waste services.

Governing Directives:

Article 1, Part A, Section 1-101 and Article 3, Part A, Sections 3-102(6) and (7), City of Riviera Beach Ordinance 2412; and Sections 1.6, 1.17(B.), 2.12, 2.12.2, and 3.0 of Request for Proposal #246-09.

Finding:

The OIG’s review found that the City Council failed to follow City procurement rules, as well as the criteria set forth in Request for Proposal (RFP) #246-09, for solid waste services. City staff, to include the City Manager and City Attorney, followed appropriate City procurement rules and RFP #246-09; however, the City Council disregarded the RFP process. They subsequently chose to award the contract to Waste Management, Inc. (WMI), who had initially been ranked last by the City’s Evaluation Committee.

During the OIG’s interviews, City Council members indicated that a bid protest by the third-ranked bidder, Southern Waste Systems, LLC (SWS), caused them to deviate from the RFP process. They subsequently chose to hear oral presentations from bidders, after which the City Council re-ranked the bidders, with WMI now being ranked first. Although the RFP’s language stated that “*Cost is not necessarily determinative in the award,*” all five City Council members (when interviewed by the OIG) stated that “cost” was their predominant consideration in awarding the solid waste services contract. The City Council’s decision to award the contract to WMI will result in additional costs⁶ to the City’s residents and commercial establishments totaling **\$2,199,504.00** over the length of the contract (five-year period).

Based on the OIG’s review of RFP #246-09, the following timeline is established:

February 19, 2010: RFP issued, which contained the following quoted pertinent information:

City will be evaluating proposals based on the following criteria...

a) *“Best Value to City” to be evaluated in terms of the optimal*

⁶ When using “cost” as the award criteria, SWS’s proposed rates for the length of the contract was \$15,383,784.00 as opposed to WMI’s proposed rates for the length of the contract for \$17,583,288.00 (a difference of \$2,199,504.00).

combination of lowest collection/service fees to customers and highest franchise and administrative fees paid to the City based upon service delivery specifications.

- b) Most cost-effective service delivery model*
- c) Satisfaction of M/WBE Participation Goal*
- d) Responsiveness – Bonding, legal requirements, and specifications met, etc.*
- e) Experience, Reliability, References*
- f) Financial Viability of Company*

Note: Cost is not necessarily determinative in the award...

May 20, 2010: Evaluation Committee provides the following completed rankings to the City Manager:

- 1st** Waste Pro
- 2nd** Republic
- 3rd** SWS
- 4th** WMI

May 21, 2010: City Manager provides Evaluation Committee's rankings to City Council for approval to begin negotiations.

June 1, 2010: SWS files a bid protest.

June 21, 2010: SWS' bid protest is resolved by the City without any changes to the original rankings.

October 20, 2010: The City Council approves a motion to hear oral presentation from each of the bidders.

November 8, 2010: City Council hears oral presentations and then re-ranks bidders based on these presentations. The City Council re-ranked the bidders in the following order:

- 1st** WMI
- 2nd** SWS
- 3rd** Republic
- 4th** Waste Pro

City Council selects WMI as the company that will enter negotiations with the City. Subsequently, the Negotiating Committee meets with WMI. During this meeting, WMI, at the Negotiating Committee's request, agrees to increase Waste Pro's

initial offer of community benefits⁷ from \$60,000.00 to \$72,000.00 per year.

February 2, 2011: WMI's contract is presented to the City Council for final approval. Prior to approval, City Council member Cedric Thomas requests that WMI provide additional community benefits, resulting in WMI agreeing to pay \$90,000.00 per year.

According to the OIG's review of proposed rates submitted by the bidders in response to RFP #246-09, the following pertinent information was obtained:

Costs below are based on proposed rates from each bidder and an estimated 17,796⁸ Residential Units and 14,800⁹ Commercial Monthly Yards [listed in order of Total Cost]:

BIDDER	RESIDENTIAL	COMMERCIAL	MONTHLY TOTAL
Southern Waste Systems, LLC (SWS)	\$ 176,180.40	\$ 80,216.00	\$ 256,396.40
Waste Management, Inc. (WMI)	\$ 182,942.88	\$ 110,112.00	\$ 293,054.80
Waste Pro USA, Inc. (Waste Pro)	\$ 258,397.92	\$ 140,452.00	\$ 398,849.92
Republic Services, Inc. (Republic)	\$ 355,742.04	\$ 85,544.00	\$ 441,286.04

Statement of Complainant Tina White

Ms. White stated that although the City issued RFP #246-09, which detailed the selection criteria for a solid waste services contract, the City Council ultimately disregarded the RFP and negotiated a contract with WMI. According to Ms. White, four bidders had been ranked by the Evaluation Committee as outlined in the RFP; however, the City Council did not agree with the rankings and chose to rank the four bidders themselves in a reversal of the original ranking order. Due to the reversal, WMI was moved from the lowest ranked position to the top ranked position.

Statement of Waste Pro Regional Vice President Russell Mackie

Mr. Mackie stated that the Evaluation Committee scored Waste Pro the highest of the four bidders because their proposal addressed every aspect of the criteria outlined in the City's RFP. Mr. Mackie stated that he was surprised that the City Council subsequently decided (November 8, 2010) that "price" would be the determining factor in awarding the contract. According to Mr. Mackie, the RFP contained several different criteria that would be considered in the contract award; however, "price" was considered to be only 30% of the total points awarded. Mr. Mackie stated that Waste Pro was

⁷ Waste Pro was the only bidder to include "community benefits" in their response to the RFP.

⁸ Based on figures provided by City Utilities Manager Pat Jackson.

⁹ The City (according to Purchasing Director Brynt Johnson) does not maintain records pertaining to commercial businesses, therefore these figures represent data compiled by SWS during their own audit of the City's commercial businesses.

ready to negotiate a contract as the top ranked bidder, at which time they could have negotiated the price; however, the City and/or the City Council never responded to their inquiries.

Mr. Mackie stated that the City Council subsequently disregarded the rankings and requested the four bidders provide presentations at that City Council meeting. According to Mr. Mackie, questions were only asked of the top two ranked bidders (Waste Pro and Republic). Mr. Mackie stated that although no questions were asked of WMI or SWS, the City Council re-ranked them as the top two bidders, with the contract being awarded to WMI. Mr. Mackie believed that Waste Pro had effectively been shut out of the process when the City Council utilized price as the primary determining factor.

Statement of Republic Services General Manager David Unversaw

Mr. Unversaw stated that he did not understand why the City Council completely ignored the rankings of its own Evaluation Committee and awarded the contract to WMI or how the first and second ranked bidders (Waste Pro and Republic, respectively) were deemed to be third and fourth after presentations were made to the City Council. Mr. Unversaw opined that given the circumstances, something must have happened “behind the scenes” to cause the reversal of the Evaluation Committee’s rankings. According to Mr. Unversaw, at some point in the process, it appeared that the criteria utilized in the RFP to rank the bidders did not matter and that cost was the predominant determining factor in awarding the contract.

Statement of SWS Vice President/Director of Business Development Patti Hamilton

Ms. Hamilton stated that SWS has submitted proposals for RFPs in other communities that were simple and straightforward, while the City’s RFP process “dragged on and on.” According to Ms. Hamilton, SWS provided a good, competitive price, while following the RFP rules when preparing their proposal. Ms. Hamilton stated that SWS was “flabbergasted” that the citizens of Riviera Beach were previously paying WMI approximately \$17.00 per residence, per month, for waste removal services and that the contract would again be awarded to WMI (who now proposed a monthly charge of approximately \$10.00) although they had been ranked last by the Evaluation Committee.

Statement of SWS Government Affairs Director Philip Medico

Mr. Medico stated that SWS responds to the criteria listed in an RFP and that SWS’ goal is to have a level playing field during the RFP process. Mr. Medico also stated that the City Council is the ultimate decision-maker in awarding a contract and while it is common for a City Council to disregard rankings, it was very unusual for the lowest ranked bidder to be awarded a contract. Mr. Medico opined that WMI somehow influenced “decision-makers” to award them the contract; however, Mr. Medico indicated that he had no direct knowledge of any WMI representatives doing so. Mr. Medico stated that SWS conforms to the law and depends on the company’s service, merit and past performance record for consideration in the award of a contract.

Statement of WMI Government Affairs Manager Harold (Butch) Carter

Mr. Carter stated that WMI previously held the City's solid waste services contract; however, because the City was not happy with the current rates, the City issued an RFP. Mr. Carter further stated that a strong commercial base, which the City has, allowed WMI to reduce its costs to residents. According to Mr. Carter, another reason he believed that WMI was selected was because a change in service providers rarely goes smoothly and cities can be exposed to major disruptions in service. Mr. Carter stated that he believed that the City Council had some concerns about the Evaluation Committee's rankings, which resulted in a new course of action. According to Mr. Carter, Waste Pro's proposal contained a lot of promises, but WMI's performance in the previous contract outweighed those promises.

Statement of City Purchasing Director Benjamin Guy

Mr. Guy stated that his Department and the Public Works Department were responsible for the development of the scope of this RFP. According to Mr. Guy, prior to the release of the RFP, City Council members received an explanation of the RFP's evaluation criteria during individual meetings. Mr. Guy stated that he was a member of the Evaluation Committee and their primary emphasis was to ensure that the City awarded the contract to the most qualified company with sufficient experience. Mr. Guy stated that price was definitely not the Evaluation Committee's most important consideration in awarding the waste contract. Mr. Guy believed that this RFP was the most objective one he has ever participated in because the results could be explained mathematically. Mr. Guy further explained that all data developed during the RFP was quantifiable and was easily translated into numbers that could be used to rank the bidders.

Mr. Guy stated that following the release of the Evaluation Committee's rankings on May 20, 2010, SWS filed a bid protest, which was ultimately resolved with a change in the awarding of points in two of the criteria categories; however, there was no change in the ranking of the bidders. According to Mr. Guy, during the bid protest, SWS representatives were in attendance at every Council meeting, which Mr. Guy believed to be a point of contention for the Council. Mr. Guy further opined that the Council may have started to feel that there was some legitimacy to the SWS protest and decided to review the different submissions. Mr. Guy advised that ultimately, the awarding of a contract is at the discretion of the City Council.

Mr. Guy indicated that he had never seen an instance where the last ranked bidder had been awarded a contract by the City Council. Mr. Guy recalled that there were some occasions when the City Council asked the ranking committee to go back out and re-rank bidders utilizing a new RFP; however, Mr. Guy did not know why the City Council failed to request that the Evaluation Committee prepare another RFP if, as it appeared, they had problems with the first one.

Statement of City Public Works Director Brynt Johnson

Mr. Johnson confirmed that he was involved in the preparation of this RFP and that per City rules, the top ranked bidder should have been allowed to enter into negotiations with the City. Mr. Johnson further explained that if those negotiations failed, the second

ranked bidder should have been selected to enter into negotiations with the City. According to Mr. Johnson, the Evaluation Committee selected Waste Pro as the top ranked bidder; however, during that process, SWS filed a bid protest that resulted in the Negotiating Committee failing to receive approval to negotiate with the highest ranked bidder (Waste Pro). Mr. Johnson stated that to his surprise, the City Council subsequently decided that WMI should be awarded the contract despite originally being the lowest ranked bidder.

Statement of City Manager Ruth Jones

Ms. Jones explained that typically, in an RFP, once the Evaluation Committee's rankings are completed, the results are forwarded to the City Council for review and approval to begin negotiations with the highest ranked bidder. Ms. Jones commented that during this RFP, the Evaluation Committee's rankings were forwarded to the City Council for review and approval so that negotiations with Waste Pro could begin. According to Ms. Jones, approximately two days after the agenda item for the City Council's review and approval were made public, SWS filed a bid protest (which was subsequently resolved by a point readjustment), which did not affect the original rankings.

Ms. Jones explained that because of SWS' bid protest, she recommended to the City Council, with the concurrence of City Attorney Pamala Ryan, that the entire RFP process be repeated. Ms. Jones stated that she had no idea why the City Council chose not to follow Ms. Ryan's or her recommendation. According to Ms. Jones, prior to the bid protest, the procurement process was adhered to; however, the City Council ultimately decided to allow each of the bidders to make a presentation, after which the City Council awarded the contract to the fourth ranked bidder, WMI. Ms. Jones indicated that the City Council exercised their right to "do whatever they want to do."

Statement of former Assistant City Manager Gloria Shuttlesworth¹⁰

Ms. Shuttlesworth confirmed that she was part of the Evaluation Committee and acknowledged that the City Council, as well as Ms. Ryan, participated in several workshop meetings to review the RFP because the City Council had to approve the RFP. According to Ms. Shuttlesworth, because the contract had not been renewed in approximately ten to fifteen years, the City wanted to ensure that the process was fair by establishing weighted criteria; however, Ms. Shuttlesworth stated that the City Council chose to go in a different direction and awarded the contract to the fourth ranked bidder, WMI.

Statement of City Attorney Pamala Ryan

Ms. Ryan explained that not all RFPs are presented to the City Council; however, due to the amount of money involved, this RFP was presented to the Council for review (prior to its release in February 2010). Ms. Ryan stated that following SWS' bid protest (which did not result in changes to the rankings), the City Council decided on November 3,

¹⁰ Attempts to contact former City employees, Finance Director Jeffrey Williams and Director of Public Works Vincent Akhimie (remaining members of Evaluation Committee) were unsuccessful.

2010, that it would hear presentations from each of the bidders even though the City Manager recommended that the contract be re-bid.

Ms. Ryan opined that it is ultimately the City Council's decision on whether or not to accept the City's recommendations or to decide on its own the merits of each proposal. Ms. Ryan stated that she advised the City Council that they were bound to follow the six criteria when deciding the contract award. Ms. Ryan opined that the City Council did not have to follow the ranking system or prepare its own. Ms. Ryan stated that it is her belief that the City Council looked at all four bidders and decided the contract award properly. Ms. Ryan further advised that she could not recall a similar situation, involving similar issues, where the City Council disregarded City staff member recommendations, but "this was a clear situation where [the City Council] decided they did not want to award the contract to the first, second or third vendor."

Statement of City Council member Dawn Pardo

Ms. Pardo stated that once the Evaluation Committee has ranked the responding bidders, the results are forwarded to the City Council for review and determination as to which bidder the City will negotiate with. According to Ms. Pardo, in this RFP, the Evaluation Committee ranked Waste Pro first, followed by Republic, SWS and WMI. Ms. Pardo believed that the City Council had several questions regarding the rankings and that Waste Pro's proposal would result in higher costs to the citizens of Riviera Beach. Ms. Pardo indicated that the City Council assigned different weight to the eight¹¹ criteria that the Evaluation Committee originally used to rank the bidders. Ms. Pardo stated that she personally had an issue with the residential rates listed in Waste Pro's proposal (approximately \$15.00 per month, per household). Ms. Pardo explained that she preferred WMI and Republic based on two factors: cost and fiscal soundness; however, it appeared that the Evaluation Committee believed that minority business and/or hiring criteria were the most important factors. Ms. Pardo stated that when it was decided by the City Council not to negotiate with Waste Pro, the second ranked bidder, Republic, was not selected because their residential rates were approximately \$20.00 per month, per household. Ms. Pardo stated that she did not vote for WMI until the end, and did so primarily because WMI's price was only \$0.30 higher per month,¹² per household, than SWS, as well as the fact that WMI had previously held the City's contract for several years with few complaints.

Statement of City Council member Billie Brooks

Ms. Brooks opined that the City Council is not mandated by law to accept the City's recommendations and has the privilege and authority to override any decision and/or recommendation made by City staff. Ms. Brooks indicated that she was initially in favor of SWS because SWS was going to utilize a local vendor and had the lowest cost. Ms. Brooks further stated that she subsequently ranked WMI as the top bidder and that her decision was based on the bidder's proposals and reflected what she believed was best for her community.

¹¹ The RFP contained six criteria (divided into eight total scoring categories) on which bidders would be evaluated.

¹² According to the OIG's review of WMI and SWS' proposals, WMI was \$0.38 more per month, per residential unit than SWS.

Ms. Brooks stated that the City Council relies on City staff to determine the weight given to each of the criteria in the RFP; however, City Council members had their own personal opinions regarding the importance of each of the criteria. Ms. Brooks further related that integrity and fairness were important and that she did not want the City to have the reputation that the process does not matter. Ms. Brooks opined that it may be necessary to “tweak” the system so that similar incidents like this (total opposition to a staff recommendation) do not occur in the future.

Statement of City Council member Judy Davis

Ms. Davis stated that her first involvement with this RFP was after the Evaluation Committee submitted their rankings to the City Council for their subsequent approval to begin negotiations with the selected bidder. Ms. Davis advised that once the rankings were released, she was leaning towards SWS, rather than Waste Pro, because SWS included more job opportunities and the cost to residents was lower. According to Ms. Davis, SWS and Waste Pro representatives called her regularly (following the bid protest) to convince her to award them the new contract. Ms. Davis further stated that because of the pressure brought on by SWS and Waste Pro, she subsequently decided to support WMI.

Ms. Davis stated that it is her understanding that the City Council has the last say in any contract decision; however, Ms. Davis opined that the City Council did not follow the City’s procurement code and believed that the City Council should have either supported City staff’s recommendation or thrown out the entire RFP and started the process over. According to Ms. Davis, the City’s procurement code specifically states that the City Council should throw out bids if they are not satisfactory and start the process over.¹³

Statement of City Council member Shelby Lowe

Mr. Lowe stated that when SWS filed their bid protest, he reviewed all of the proposals submitted and noted that there appeared to be some “discrepancies” and controversy regarding the bids. According to Mr. Lowe, because of the bid protest, he suggested that the RFP be thrown out and restarted; however, Mr. Lowe was unable to recall whether or not he made a motion to do so.¹⁴ Mr. Lowe indicated that he expressed his feelings about problems he saw in the process, after which City Manager Ruth Jones also made the recommendation to restart the process; however, the remaining City Council members decided that they would continue the process by requiring each of the bidders to make a presentation. Mr. Lowe opined that since the City Council has the final approval on all contracts, the City Council had the right to change the RFP process. Mr. Lowe stated that during the process, he looked to City Attorney Pamala Ryan and City Manager Ms. Jones for guidance. Mr. Lowe believed that the RFP process was followed all the way through, but because of the time constraints dealing with the expiration of the previous contract (September 30, 2010), the City Council amended the process.

¹³ According to the OIG’s review of City of Riviera Beach Procurement Code 2412, there was no language that confirmed Ms. Davis’ statement.

¹⁴ According to minutes from the October 20, 2010 City Council meeting, Mr. Lowe did not.

Mr. Lowe stated that cost was the most important criteria in the RFP to him; however, Mr. Lowe explained that he supported WMI because they were already in place, had provided decent service and their price was low. Mr. Lowe advised that Waste Pro's price was higher than others and opined that may have been the reason why the City Council ranked them last after the Evaluation Committee ranked them first. Mr. Lowe advised that perhaps the process was not fair because Waste Pro had not been given the opportunity to re-negotiate their price with the City.

Statement of City Council member Cedric Thomas

Mr. Thomas stated that he was unable to recall which of the criteria was considered the most important to the Evaluation Committee; however, Mr. Thomas indicated that cost was the most important to him. Mr. Thomas stated that he had no problem disregarding the procedures involving contract negotiations because City staff conveyed to the City Council that although the Evaluation Committee gave initial rankings to the bidders, the City Council was not mandated to follow their (the Evaluation Committee's) rankings. Mr. Thomas explained that because the City Council was under time constraints involving the expiration of the current contract (with WMI), and the process had become "convoluted," the City Council decided to proceed by having each bidder prepare a presentation before the City Council, at which time a decision would be made.

Issue (2):

The City of Riviera Beach Council's request for monetary donations deemed "community benefits," prior to the approval of the solid waste services contract, gave the appearance that the contract award was based on the amount of community benefits obtained by the City Council.

Governing Directives:

Article 1, Part A, Section 1-101 and Article 3, Part A, Sections 3-102(6) and (7), City of Riviera Beach Ordinance 2412; and Section C(2) and (3) of the Palm Beach County Grand Jury Report, May 21, 2009.

Finding:

According to City Resolution #63-11 (May 4, 2011), "community benefits" essentially provide discretionary funds to elected officials (City Council) for their own public purposes such as "charitable events, not-for-profit organizations, or City functions or projects, including for example, contributions to the City's Scholarship Fund or the City's Housing Trust Fund."

The OIG review found that Waste Pro, originally ranked first by the Evaluation Committee, included in its proposal a monetary donation, deemed "community benefits," in the amount of \$60,000.00 (per year). Information disclosed during the OIG review found that prior to the award of the contract, the City's Negotiating Committee, requested that WMI meet or exceed Waste Pro's \$60,000.00 community benefits offer. WMI agreed to contribute \$72,000.00 per year in community benefits.

Subsequently, during the February 2, 2011 City Council meeting (when the contract was to be approved), City Council member Cedric Thomas elicited, in addition to other contractual considerations, an increase in WMI's offer of community benefits to \$90,000.00. WMI agreed to the increase and then the City Council unanimously approved the award of the contract to WMI. It should be noted that during this same City Council meeting, two City Council members (Dawn Pardo and Judy Davis), the City Manager and the City Attorney expressed their disagreement with the request for additional community benefits, as well as the methodology used. The City Attorney commented that "[it gave a] perception of quid pro quo." Furthermore, WMI's own representative stated that WMI did not like the community benefits process (WMI would have preferred to make their contributions directly to charitable organizations in the community), but was not going to allow requests for community benefits to jeopardize the award of the contract to WMI.

Statement of Complainant Tina White

Ms. White stated that community benefits were not part of the RFP and therefore not considered to be a weighted factor when the proposals were reviewed by the Evaluation Committee. When asked how Waste Pro knew to include community benefits (whose initial response to the RFP included \$60,000.00 per year in community benefits) in its proposal when there was no mention of such in the RFP criteria, Ms. White's attorney, Andrew DeGraffenreidt, III¹⁵ stated that "[Waste Pro] just came up with it." According to Ms. White, during the February 2, 2011 City Council meeting, Council member Cedric Thomas advised WMI representative Harold (Butch) Carter that "you're going to have to do better than \$72,000.00 [per year] for community benefits," referring to WMI's offer to increase their community benefits to \$72,000.00. Ms. White stated that Mr. Carter subsequently agreed that WMI would provide \$90,000.00 (per year) in community benefits.

Statement of Waste Pro Regional Vice President Russell Mackie

Mr. Mackie stated that part of Waste Pro's business plan is to put money back into the community. Mr. Mackie further stated that initially, Waste Pro was the only company to offer community benefits and when the City Council requested individual presentations from the bidders, those companies added community benefits. Mr. Mackie stated that after WMI was chosen, Waste Pro wrote a letter to the City stating that the community benefit offered by each of the bidders should not have been a determining factor in the City Council's final decision. According to Mr. Mackie, the City effectively changed the terms of the RFP requirements when the City Council subsequently added community benefits as part of the process. Mr. Mackie opined that the City should have entered into negotiations with Waste Pro and, if they were unable to reach an agreement, move on to the next highest ranked company.

Statement of Republic Services General Manager David Unversaw

Mr. Unversaw stated that he did not know where the "community benefits" request came from during this RFP process. According to Mr. Unversaw, while it is not unusual for a bidding company to contribute resources to the community it serves, it is highly unusual

¹⁵ Mr. DeGraffenreidt represented Waste Pro during this time period.

for community benefits to become a part of the bid process. Mr. Unversaw stated that Republic had not been advised of the community benefits expectation by the Evaluation Committee prior to the submission of Republic's proposal. According to Mr. Unversaw, Republic did not become aware of the significance of community benefits until the City Council ignored the recommendations of the Evaluation Committee and requested individual presentations by the bidders (October 20, 2010). Mr. Unversaw stated that Republic strongly believes in being a community partner; however, he added that Republic never offered community benefits since it was not part of the RFP and occurred after the fact.

Statement of SWS Vice President/Director of Business Development Patti Hamilton

Ms. Hamilton stated that she was unsure whether the provision of community benefits was a common practice for SWS, but SWS was committed to giving back to the communities it worked in by donating directly to local charities. Ms. Hamilton was unable to explain how SWS became aware that it should offer community benefits during the presentations requested by the City Council even though community benefits were not requested in the RFP.

Statement of SWS Government Affairs Director Philip Medico

Mr. Medico stated that the manner in which the City Council handled charitable contributions made by companies was very unusual in that contributions were normally provided directly to charitable entities and not the City itself. Mr. Medico opined that the request for community benefits could have been a determining factor for which company was awarded the contract.

Statement of WMI Government Affairs Manager Harold (Butch) Carter

Mr. Carter stated that community benefits were not discussed until after WMI was chosen by the City Council as the company that the City would negotiate with (November 8, 2010). Mr. Carter advised that during the negotiations, the Negotiating Committee mentioned that the Waste Pro proposal included a community benefits offer, to which there was an expectation that WMI would be required to match or exceed the amount offered by Waste Pro. According to Mr. Carter, the Negotiating Committee asked for a \$100,000.00 community benefits donation (per year), in addition to all other proposed terms. Mr. Carter indicated that his initial response to the Negotiating Committee was "no," but WMI later reconsidered and offered \$72,000.00 in community benefits. Mr. Carter stated that during the February 2011 City Council meeting, Council member Cedric Thomas requested even more community benefits than had been negotiated. Mr. Carter felt that WMI had gone as far as they were prepared to go, but that it was "pretty common" for Cities to ask for additional considerations from the dais. According to Mr. Carter, WMI responded to Council member Thomas' request and increased their community benefits offer to \$90,000.00. Mr. Carter further stated that WMI was not going to allow requests for additional community benefits to jeopardize the contract award to WMI.

Mr. Carter stated that the community benefits fund is something that WMI does not like because WMI believes that their contributions should be provided directly to charities, thus giving WMI the ability to use the contributions as a tax write-off, as well as receive recognition from the community for its charitable efforts.

Statement of City Purchasing Director Benjamin Guy

Mr. Guy stated that the community benefits in the final contract resulted from the negotiations process. Mr. Guy explained that after the initial RFP response was made public, all of the bidders became aware that Waste Pro included a community benefits stipend in its proposal. Mr. Guy further stated that he wanted the community benefits aspect in the contract because he felt that it was important and that it demonstrated a commitment to the City by the bidders. Mr. Guy confirmed that the initial community benefits offer negotiated by the Negotiating Committee with WMI was \$72,000.00. Mr. Guy advised that during the WMI negotiations, several other additional benefits were discussed and implemented. Mr. Guy described the negotiations as being “give and take,” in that both the City and WMI agreed to some concessions, which proved to be beneficial to the citizens of Riviera Beach.

Statement of City Public Works Director Brynt Johnson

Mr. Johnson stated that the RFP contained language requesting administrative fees, but did not specifically ask for community benefits. Mr. Johnson advised that after the City Council decided that WMI should be awarded the contract, negotiations relating to community benefits were conducted, which is when Mr. Johnson believed that community benefits were first discussed with WMI. Mr. Johnson was unsure how community benefits became a part of WMI’s proposal and opined that they may have been offered by WMI after discussions with the Negotiating Committee. Mr. Johnson stated that WMI’s previous contract with the City did not include community benefits. Mr. Johnson stated that following WMI’s agreement with the Negotiating Committee to provide \$72,000.00 in community benefits, he and Mr. Guy met with each of the Council members (prior to Council member Thomas’ February 2, 2011 request for additional community benefits) to explain the contents of the negotiated contract, to include community benefits.

Statement of City Manager Ruth Jones

Ms. Jones advised that the offer of community benefits by bidders was voluntary and not required. Ms. Jones further stated that she did not believe that the offer of community benefits influenced the decision to award the contract to WMI, inasmuch as WMI had not initially offered community benefits in their proposal.¹⁶ According to Ms. Jones, during the February 2, 2011 City Council meeting, WMI was asked to increase their community benefits offer of \$72,000.00 (agreed-upon amount resulting from meetings with the Negotiating Committee), as well as add other special considerations. Ms. Jones stated that during her tenure in public office, she would attempt to stop any City Council member from going “down the path” of asking for additional monies from

¹⁶ Waste Pro was the only bidder to offer community benefits in their proposal. It was not until WMI met with the Negotiating Committee (following the City Council’s November 8, 2010 approval for the City to begin negotiations with WMI) that WMI agreed to provide \$72,000.00 in community benefits per year.

bidders. Ms. Jones advised that City Attorney Pamala Ryan “beat her to the punch” and advised the Council that discussing and/or negotiating community benefits at that time was improper.

Statement of City Attorney Pamala Ryan

Ms. Ryan stated that it was her recollection that the RFP contained language regarding community benefits,¹⁷ but if that was accurate, she had no idea why only one of the companies (Waste Pro) offered community benefits in their proposal. Ms. Ryan stated that two of the bidders, Waste Pro and SWS, offered “all kinds of stuff,” however, Ms. Ryan did not recall WMI or Republic offering community benefits. Ms. Ryan stated that her recollection was that community benefits did not become an issue until after WMI was selected as the winning bidder. Ms. Ryan explained to the City Council (February 2, 2011) that the question was not whether community benefits were legal or ethical but that they gave a perception of a “quid pro quo” and that it would be better if the Council passed a resolution, after which they could “divide [the community benefits] any way [they] want.”

Statement of City Council member Dawn Pardo

Ms. Pardo stated that the community benefits request from the City Council gave the appearance that the City was “shaking down” bidders and that it made the City look bad. Ms. Pardo stated that once community benefit funds were provided to the Council members it seemed as if residents were constantly “hounding” members for money by telephoning and emailing Council members. Ms. Pardo stated that she did not know how WMI came up with their initial offer of \$72,000.00 in community benefits.¹⁸

Statement of City Council member Billie Brooks

Ms. Brooks stated that she was not sure why WMI added the community benefits offer after being selected by the City Council as the company the City should negotiate with, but opined that perhaps WMI was aware that Waste Pro had included a community benefits offer in its proposal and WMI decided to do the same.¹⁹

Statement of City Council member Judy Davis

Ms. Davis stated that she was “totally surprised and shocked” by the actions of Council member Thomas during the February 2011 City Council meeting where Mr. Thomas attempted to negotiate additional community benefits from WMI. Ms. Davis stated that Mr. Thomas’ actions were out of the ordinary and this was the first time that she had seen this take place. Ms. Davis stated that she was not aware of how community benefits entered into the RFP process,²⁰ but stated that the community benefits offered by WMI did not influence her decision to vote for them.

¹⁷ The RFP did not contain any language regarding the offer of community benefits.

¹⁸ This initial offer resulted from meetings with the Negotiating Committee (between November 8, 2010 and February 2, 2011).

¹⁹ This initial offer resulted from meetings with the Negotiating Committee (between November 8, 2010 and February 2, 2011).

²⁰ This initial offer resulted from meetings with the Negotiating Committee (between November 8, 2010 and February 2, 2011).

Statement of City Council member Shelby Lowe

Mr. Lowe advised that community benefits were ultimately offered by each of the bidders and he believed that community benefits may have been a part of the RFP. Mr. Lowe stated that WMI's community benefit offer followed SWS' bid protest, but was unsure as to how it was introduced or negotiated. Mr. Lowe stated that the old WMI contract did not include community benefits; however, WMI had given money and supported numerous activities in the City.

Statement of City Council member Cedric Thomas

Mr. Thomas stated that he did not care for WMI and believed that WMI had been overcharging the City's residents for years. Mr. Thomas stated that he was unable to understand how WMI received a five year contract, with multiple renewals, yet charged residents approximately \$18.00 per month. Mr. Thomas further stated that he was upset with WMI when their most recent proposal included a rate reduction of almost fifty percent. Mr. Thomas indicated that he had "trust issues" with WMI and in retrospect, would have asked for more community benefits had he known how quickly WMI agreed to the \$90,000.00 figure. Mr. Thomas stated that he understands that others may have problems with the utilization methods concerning community benefits, and advised that Council member Davis chastised him for requesting the community benefits in the manner that he did. Mr. Thomas stated that he "did not care" because it was all "done in the Sunshine," WMI was making millions of dollars from the contract, and WMI could afford to give back to the City. Mr. Thomas stated that he ultimately voted for WMI because of the additional benefits, as well as the fact that it was apparent that his first choice, SWS, was not going to be awarded the contract.

ARTICLE XII, SECTION 2-427

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, the City was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Management Review within ten (10) calendar days. On August 14, 2012, the City indicated they would not be submitting a response.

This Management Review has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.