



John A. Carey
Inspector General

**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**



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“Enhancing Public Trust in Government”

Contract Oversight Report

CA-2017-0049

Loxahatchee Groves Solid Waste Assessment Program Study & Report

August 1, 2017

Insight – Oversight – Foresight



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LOXAHATCHEE GROVES

SOLID WASTE ASSESSMENT PROGRAM STUDY & REPORT

SUMMARY

WHAT WE DID

The Town of Loxahatchee Groves (Town) issued Request for Proposals (RFP) #2017-03 for the procurement of a Solid Waste Assessment Program Study and Report. Staff from the Contract Oversight Division of the Office of Inspector General (OIG) monitored the RFP process.

Our review included analyzing the RFP and other relevant documents provided on behalf of the Town or available on the Town's website; interviewing the Town Manager and Town Clerk; reviewing pertinent portions of the March 21, 2017 Town of Loxahatchee Groves Council Meeting; and evaluating relevant components of the Town's RFP process and procedures.

WHAT WE FOUND

The RFP defined the evaluation criteria by which the proposals would be reviewed, evaluated and ranked by the Town Manager. The Town did not provide written notes or documentation evidencing that the Town Manager quantified the evaluation criteria identified in the RFP

when reviewing and evaluating the proposals. This led us to question the methodology used to evaluate the proposals, as well as, the accuracy of the subsequent recommendation of the award of the contract.

The information provided by the Town does not show that the Town Manager assigned percentage points in accordance with the evaluation criteria specified in the RFP. Consequently, the lack of proper documentation to support the expenditure of taxpayer dollars results in Questioned Cost totaling \$6,437.20.¹

The purpose of the proposal evaluation process in public procurement is to provide a method to determine which proposals best meet the government's stated needs. Price may be one of several criteria used to find the best value. Through the evaluation factors, the government is able to assess the similarities and differences and strengths and weaknesses of competing proposals, thus, allowing the agency to make a sound source selection decision. Proper documentation of the procurement process reinforces openness and transparency, decreases the

¹Under Inspector General policy and procedures these costs are questioned by the OIG because at the time of the OIG activity, such cost "is not supported by adequate documentation." As such and in this case, not all questioned costs are indicative of potential fraud or waste. The amount of questioned costs stated in this report is based on the invoices paid to date by the Town. Such amount is subject to change based on the approved final invoice to the Town.

opportunity and/or appearance of favoritism towards one proposer over another, inspires confidence that the contract was awarded fairly, and assists the public, the unsuccessful proposer, and the OIG in clearly understanding the rationale behind the selection. Although no bid protest was filed in this instance, the lack of documentary evidence showing that the Town Manager properly quantified the evaluation criteria as specified in the RFP potentially leaves the Town open for a challenge in the form of a protest or lawsuit. It is undisputed that the Town selected the lowest priced proposal, thereby potentially saving taxpayer dollars. The Town, however, chose to make the purchase using an RFP which provided that the Town would make the decision based on several factors beyond price.

WHAT WE RECOMMEND

1. The Town should strengthen internal controls of the evaluation process by documenting how each evaluation criteria are quantified for future proposals in a manner consistent with the solicitation document.

2. The Town Manager should properly document the evaluation to evidence that the proposals were reviewed and evaluated in accordance with the criteria and weight given to each criteria.
3. The Town should consider using a selection committee for competitive solicitations. This would strengthen the integrity and transparency of the evaluation process.

Additionally, we suggest in future solicitations that the Town first determine the most appropriate solicitation method when procuring goods or services. We recommend using an Invitation to Bid when the award will be made using the lowest priced responsive and responsible bidder and a Request for Proposal when more, clearly defined evaluation criteria will be considered.

BACKGROUND

On February 9, 2017, the Town of Loxahatchee Groves issued RFP # 2017-03 for the procurement of a Solid Waste Assessment Program Study and Report. The purpose of the solicitation was to obtain a review of the Town's current solid waste collection and to propose a legally defensible methodology to collect special assessment from both residential and non-residential properties within the Town. The RFP authorized the Town Manager to review the proposals using the evaluation criteria set forth in the RFP and assign weight to each criteria based upon the percentages specified.

Evaluation Criteria	Percentage
Experience	15%
Project Approach	15%
Credentials	15%
Schedule	25%
Price	30%

The RFP clearly specifies the evaluation criteria and assigned percentage rates based on level of importance. The price category was most important, but was only thirty percent (30%) of the evaluation. Schedule, the next important criterion, was twenty-five percent (25%) of the evaluation. Experience, project approach, and credentials each accounted for fifteen percent (15%) of the evaluation.

The deadline for proposal submission was March 8, 2017 by 12 P.M. Two proposals were received by the submission deadline: 1) Public Resources Management Group, Inc.(PRMG) and 2) MSW Consultants. On March 20, 2017, the Proposal Summary Sheet (Attachment A) was posted on the Town's website. The Town Clerk prepared the Summary Sheet before she submitted the proposals to the Town Manager for evaluation. The Town Clerk did not evaluate the proposals in preparing the Summary Sheet; thus, it appears that the Summary Sheet was used solely to determine the "responsiveness" of the two proposals to ensure that they submitted all the required information and documentation needed to be considered. The Summary Sheet did not apply percentage points to the proposals based upon the RFP evaluation criteria; namely, experience, project approach, credentials, schedule, and price.

On March 21, 2017, the Town Manager presented agenda item 7d to the Town Council requesting a resolution to approve the recommended award of RFP # 2017-03 to PRMG. During the council meeting, there was no discussion or comparison of the proposals regarding the five evaluation criteria within the RFP based upon their level of importance identified in the RFP.

On March 21, 2017, The Town Council approved the item in a 5-0 vote, and a contract was executed between the Town and PRMG in the amount not to exceed \$26,340.00. Pursuant to such contract, on May 31, 2017, PRMG submitted to the Town Manager a report showing its review of the Town's Solid Waste Assessment Program and a proposed methodology to improve the sharing of solid waste collection costs, along with Invoice No. 9933, seeking payment in the amount of \$6,437.20. The report was submitted to the Town Council on June 6, 2017. The Town issued payment for the services outlined in Invoice No. 9933 on June 10, 2017 (Check No. 7699). According to the Town Manager, PRMG's final invoice will be presented to the Town Council for approval once it is received. It is projected that the full awarded amount of the contract will not be expended. Therefore, the questioned cost may be adjusted to reflect the actual amount of services rendered.

FINDINGS

FINDING (1):

The Town did not provide adequate documentation to support that proposals were evaluated in accordance with the criteria outlined in the Request for Proposal.

OIG Review

In the course of our routine contract oversight duties, we requested supporting documentation related to the receipt and review of the responses to the RFP. In response to the request, the Town provided us the Proposal Summary Sheet (Attachment A) on March 10, 2017. The Proposal Summary Sheet was a review of each proposal's responsiveness that documented whether the proposers included the information necessary to be considered for award. The Town Clerk advised us that she would forward the proposals to the Town Manager for further evaluation. The summary sheet reviewed the following requirements:

- Response received by March 8, 2017 at 12 P.M.
- Similar work for local government in Florida completed in the past 5 years
- Demonstration of knowledge of legal criteria for valid special assessments
- Identification of persons responsible for the work
- Description of tasks to be completed
- References/Credentials
- Inclusion of proposed fee structure
- Proposed engagement letter/agreement outlining other terms requested by proposer; if applicable
- Completion of all required forms
- Evidence of required insurance
- Submission of 5 hard copies and 1 DVD

Subsequent to the award of the contract, we requested any additional information and/or documentation that would support a finding that a review of the responses based upon evaluation criteria was completed. As a result of this request, the Town provided an e-mail dated April 3, 2017 (Attachment B). The e-mail explained the Town Manager's process for making a recommendation to the Town Council, but it did not document how each proposal was quantified based upon the criteria and weights assigned to each in the RFP. The Town Manager explained that, "both firms were qualified. Both firms had good credentials. One firm has done more in Florida, and was less expensive. I went with the less expensive and the firm that has more Florida experience." The e-mail also included a copy of a brief handwritten note dated March 11, 2017, of the review completed by the Town Manager. As shown below in Figure 1, the note did not document a review of all the evaluation criteria as specified in the RFP and makes no mention of either proposer's

project approach. The handwritten note does not show that the evaluation criteria were given proper weight.²

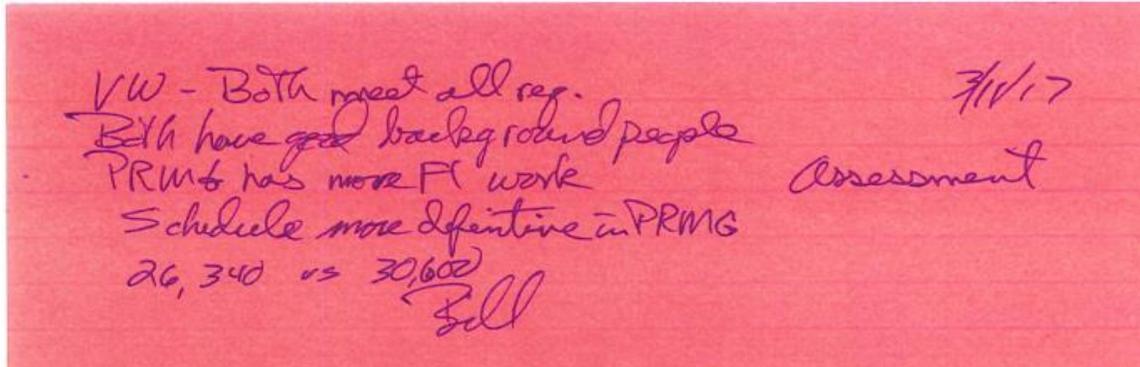


Figure 1: Town Manager's documentation of evaluation of proposals

We reviewed the video of the March 21, 2017 Council Meeting, specifically agenda item 7d requesting a resolution to award RFP # 2017-03 to, and approve an agreement with, PRMG. During the presentation of item 7d, only one of the five evaluation criteria was mentioned; price. The Town Manager stated, "We put out to bid and received two quotes; this one is the lowest offer, PRMG; the other quote is in the Clerk's office."

A review of supporting documents used for agenda item 7d did not contain evaluation criteria as specified in the RFP. No reference was made to show the evaluation of the criteria in accordance with the level of importance identified in the RFP.

Based on all documentation provided by the Town and reviewed by us (the Proposal Summary Sheet, the e-mail explanation and note from the Town Manager, agenda item 7d resolution documentation and the March 21, 2017 Council meeting video) the Town did not provide sufficient evidence that the proposals received were evaluated based on the evaluation criteria contained in the RFP. An award to PRMG was approved by the Town's Council on March 21, 2017, even though the Town did not have adequate documentation to support that the proposals were evaluated in accordance with the RFP.

An Invitation for Bid (IFB) is a method of procurement that is price motivated when the scope of work is capable of being specifically defined; the lowest price serves as the basis for award if the requirements for responsiveness and responsibility are met. Request for Proposals (RFPs) is a method of procurement that is used where factors

² See e.g., *Deloitte & Touche LLP, v. State of Florida, Department of Health and Rehabilitative Services*, 1995 WL 1053024 (Fla DOAH May 12, 1995, Recommended Award) (holding that the HRS Secretary erred in altering the weight of the scoring criteria so that costs became the major consideration, contrary to the terms of the RFP, and stating, "[p]art of the reciprocity achieved under the competitive bidding process is achieved in the bid specifications and weighted bid evaluation criteria. Potential bidders are advised in advance of the requirements to be met in order to receive the contract award, as well as the standards by which each bid will be evaluated by the agency and each standard's relative importance to the agency. In essence, this advance notice enables a potential bidder to gauge the agency's notions of the type of bid best suited to its purpose for the money involved. A potential bidder can then determine whether he can meet the bid specifications and criteria and thereby determine whether he wishes to go to the time, expense and trouble of preparing and submitting a fairly lengthy and detailed bid proposal. Therefore, central to the integrity and reciprocity of the competitive bidding process is the requirement that an agency's action on a bid can be expressed within the bid specifications and evaluation criteria which it created. In other words, should an agency reject a bid for reasons not given weight in the bid evaluation criteria, that action would go to the integrity of the competitive bidding process and would be arbitrary and capricious.").

(evaluation criteria) other than price are critical and the ability to negotiate is desired or required. All Requests for Proposals shall state the relative importance of price and any other evaluation criteria.³ Central to the integrity of the competitive bidding process is the requirement that an agency's actions be expressed within the bid specifications and evaluation criteria created by it.⁴

Evaluation criteria are established to provide the ability to review proposals in various categories on a fair and equitable basis ensuring transparency in the evaluation process when properly documented. In many cases, the criteria will fall into three broad categories: technical capability and the approach for meeting the specifications; competitiveness; and reasonableness of price or cost.⁵ By scoring the evaluation criteria in proposals, it provides a benefit to all potential proposers and the contracting agency. Proposers benefit by receiving specific guidance for the basis of an award and the contracting agency benefits by receiving qualified proposals addressing a specific need. Additionally, the scoring of evaluation criteria provide feedback to proposers who submitted proposals that were not awarded; allowing them the opportunity to understand areas for improvement or an opportunity to protest the award⁶, if necessary. Scoring allows the public to understand the decision-making process of the governmental entity spending public dollars.

Florida legislature recognizes 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. The evaluation process is to ensure fair competition and obtain the best value. When the evaluation criteria process is not adhered to as stated in the solicitation, the award is vulnerable to a bid protest. Best practices and transparency dictate that the contract file shall contain documentation supporting the basis on which the award is made.

QUESTIONED COSTS

Due to the lack of proper documentation we determined that the **\$6,437.20** expended under the contract executed between the Town and PRMG to be questioned costs. The questioned cost amount represents the total financial obligation the Town has incurred for said services rendered as a result of the contract award. Such amount is subject to change based on the approved final invoice to the Town.

³ Town of Loxahatchee Ordinance No. 2008-09; see also Jack Pitzer and Khi Thai, *Introduction to Public Procurement Third Edition*. (NIGP: The Institute of Public Procurement, 2009), 132

⁴ Procacci, et al. v. Department of Health and Rehabilitative Services, 1990 WL 74932 (Fla. DOAH, September 27, 1990, Recommended Order).

⁵ National Association of State Procurement Officials. *State and Local Government Procurement: A Practical Guide*. Lexington: NASPO, 2008.

⁶ *City of Sweetwater v. Solo Construction Corp.*, 823 SO. 2D 798 (2002) (The standard for a bid protest is whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. An agency is likely to be found to have acted arbitrarily if it does not comply with the criteria in its own solicitation documentation).

RECOMMENDATION

1. The Town of Loxahatchee Groves should evaluate proposals in accordance with evaluation criteria specified within the RFP.
2. The Town Manager should properly document the evaluation to evidence that the proposals were reviewed and evaluated in accordance with the criteria and weight given to each criteria.
3. The Town should consider having selection committees of more than one person in order to better document the award recommendation.

Additionally, we suggest in future solicitation that the Town first determine the most appropriate solicitation method when procuring items/services. We recommend using an Invitation for Bid when the award will be made using lowest price and a RFP when more, clearly defined evaluation criteria should be considered.

RESPONSE FROM MANAGEMENT

A draft of this report was provided to the Town Manager, but no response was provided.

ACKNOWLEDGEMENT

The Inspector General's Contract Oversight staff would like to extend our appreciation to The Town of Loxahatchee Groves 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>.

ATTACHMENTS

“A”

Town of Loxahatchee Groves Proposal Summary Sheet			PAGE <u>1</u> OF <u>1</u>		
Proposal for: RFP No. 2017-03 Solid Waste Special Assessment Program Study and Report			Date: No. of Proposals Received: 2		
DESCRIPTION	VENDORS				
Requirements:	Public Resources Management Group, Inc 341 N Maitland Ave, Suite 300 Maitland, FL 32751	MSW Consultants 11875 High Tech Ave, Suite 105 Orlando, FL 32817			
Deadline March 8, 2017 at 12 Noon	Received 3/8/2017 at 8:00 am	Received 3/8/2017 at 10:02 am			
Similar work for local government in Fla in past 5 years	11 in past 5 years in FL 10 others previous in FL	One in past 5 years in FL Three in 2010-2011 in FL			
Demonstrate knowledge of legal criteria for valid special assessments	yes	yes			
Identify persons responsible for the work	yes	yes			
Description of Tasks to be Completed	yes	yes			
References/Credentials	yes	yes			
Proposed Fee Structure	yes	yes			
Proposed Engagement Letter/Agreement outlining other terms requested by Proposer	no	no			
All required forms completed	Yes, including missing forms	Yes, except those 2 forms left off original bid packet			
Evident of Insurance Requirements	yes	yes			
5 copies and 1 DVD	yes	yes			
Signatures of Town of Loxahatchee Groves Personnel Present: 					

Note: Based on our review of both proposals and the listed requirements, we found that the validity of the Summary Sheet is accurate. However, PRMG did not have missing forms, and the two forms left off the original bid packet for MSW Consultants were not applicable to the response of the RFP.

“B”

William (Bill) Underwood, II <wunderwood@loxahatcheegrovesfl.gov>

Tiffany Thomas; MCirullo@cityatty.com; Virginia Walton; + 6

2

4/3/2017

Solid waste assessment notes

20170403173016896.pdf
267 KB03-21-2017 Town Cou...
4 MB

Ms. Thomas,

Please pass this along to Dennis. Pursuant to your emails and my subsequent discussion with you and Dennis, please be advised a scan of my notes is attached.

My job as Town Manager is to review, evaluate and make recommendations on a whole host of items on any given day. Please let me know in what portion of the Florida Statutes relative to the Sunshine law does it make reference that a public official (not a board, commission, or selection committee) reviewing and evaluating proposals submitted to a municipality must advertise his/her deliberations, allow the public to view of my review and evaluation, and ensure a recording of the proceedings is made.

On the question publicizing the review, and evaluation of the two proposals received by the Town, that would only come into play if a selection committee was used to review, evaluate, and recommend. No selection committee was convened. I reviewed the two proposals, and made a recommendation. The proposals were not complicated, but very straight forward. I do have the expertise to review and evaluate such proposals. I have been a Certified Finance Director for more than 37 years. I have over the course of my career hired many consultants to provide these type of services.

Both firms were qualified. Both firms had good credentials. One firm has done more in Florida, and was less expensive. I went with the less expensive and the firm that has more Florida experience.

This is no different than when the Town bid the B Road Improvements Project. The Town's engineering firm reviewed all the submissions, and presented a recommendation to the Town Council for consideration. No selection committee was used, no advertising of the review and evaluation. The item was placed on the agenda for Town Council consideration and the engineers were present to answer any questions the Council may have had.

I meet before each Town Council meeting with individual Councilmen and review Agenda matters, provide input on items important or of concern to them. That item was treated the same way in that I discussed the issue, answered any questions they may have had, and included my recommendation in the Agenda packet as part of the resolution along with the addenda, the proposal summary sheet and PRMG response that was included with a note that anyone can review the other proposal which is in the Clerk's office.

William F. Underwood, II, Town Manager
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