



## OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

### CONTRACT OVERSIGHT NOTIFICATION (2013-N-0012)

Sheryl G. Steckler  
Inspector General

ISSUE DATE: DECEMBER 5, 2013

---

*"Enhancing Public Trust in Government"*

### **Palm Beach County – Haverhill Road Project No. 2013528**

#### **SUMMARY**

State of Florida law mandates that when an "agency"<sup>1</sup> acquires "professional services"<sup>2</sup> for a public construction, rehabilitation or renovation project they must comply with section 287.055, Florida Statutes: the Consultants' Competitive Negotiation Act (CCNA). Palm Beach County ("County") developed Policy and Procedure Memorandum (PPM) #CW-O-048 with the stated purpose of establishing "procedures for the acquisition of professional services from architects, engineers, landscape architects, or land surveyors and mappers for projects.... established under the State of Florida's "Consultants' Competitive Negotiation Act" (CCNA)".

Office of Inspector General staff observed the "Short List Committee" meeting conducted by the County Engineering & Public Works Department for the Haverhill Road project. The OIG determined that the established procedure, as set forth in PPM #CW-O-048 and used by the "Short List Committee", is inconsistent with Florida Law in that the elimination of qualified bidders occurs without evaluation based on uniform criteria and weightings. The preliminary selection process essentially eliminated eight (8) of the fifteen (15) proposals, or 53%, without scoring and ranking them, which is fundamental to the CCNA selection process outlined in Florida Statutes.

It is noted that PPM #CW-O-048 is a standard procedure followed by the County departments of Engineering and Public Works, Environmental Resource Management, Water Utilities, Airports and Facilities Development and Operations when acquiring "professional services".

#### **BACKGROUND**

On March 17, 2013, the County Engineering & Public Works Department (EPW) published a Request for Qualifications (RFQ) seeking interested firms to provide "all engineering services required for the preparation of plans and specifications" for the Haverhill Road project between Caribbean Boulevard and the Bee Line Highway ("Haverhill Project"). The solicitation was issued pursuant to the CCNA whereas the County sought experienced firms in the following areas: general highway design;

---

<sup>1</sup> An "agency" means the state, a state agency, a municipality, a political subdivision, a school district, or a school board.

<sup>2</sup> "Professional services" means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

environmental studies; engineering surveying; geological and geophysical studies and materials testing.

On July 9, 2013, Office of Inspector General (OIG) staff attended the “Short List Committee” meeting for the Haverhill Project. The County EPW Department received fifteen (15) proposals in response to the RFQ; however, the OIG observed that the “Short List Committee” members did not formally score and rank all of the proposals received.

## FINDINGS

### FINDING (1):

**The selection process outlined in Palm Beach County’s PPM #CW-O-048 is inconsistent with the State of Florida Consultants’ Competitive Negotiation Act in that the elimination of qualified bidders occurs without evaluation based on uniform criteria and weightings.**

#### Palm Beach County selection of consultants using PPM #CW-O-048:

County PPM #CW-O-048 establishes a multi-step selection process for procuring architectural and/or engineering services pursuant to section 287.055, Florida Statutes (CCNA). The **first step** establishes a “Short List Committee” to evaluate the proposals received in response to the solicitation document. The **second step** establishes a “CCNA A/E Selection Committee” who interview, rank and score the “final short list” firms as “most qualified to least qualified to perform the service based upon interview results and the (evaluation) criteria” listed in PPM #CW-O-048.

#### Short List Committee Procedures (first step):

The **first step** of the selection process is to establish a “Short List Committee” to “evaluate responses and determine which three (3) firms and, if available, up to three (3) alternates are most qualified to perform the services required.” PPM CW-O-048 states, in part, that the “Short List Committee” members are to meet and collectively determine the most qualified firms as follows:

- (a) *Each member will produce a preliminary short list of most qualified firms based on his/her review and Committee discussion;*
- (b) *The firms which receive the **most votes** [EMPHASIS ADDED] will form the preliminary short list; and,*
- (c) *The Short List Committee will further evaluate the preliminary short list in order to formally determine and rank the list of most qualified firms using the **scoring method** [emphasis added] in Attachments 6 and 7. The rankings shall be performed on an evaluation form.... The appropriate number of firms with the lowest point totals (determined by the rankings) will make up the final short list.*

The OIG noted that the methodology used in sub-step (a) is subjective in nature in that it does not require the use of uniform and documented criteria and weightings. In contrast, sub-step (c) requires the use of PPM #CW-O-048, “Attachment 6”, which contains uniform criteria and weighting, when evaluating the “preliminary short list” firms. Firms advancing from the “preliminary short list” make up the “final short list”.

CCNA A/E Selection Committee Procedures (second step):

The **second step** of the selection process establishes the “CCNA A/E Selection Committee” to interview the “final short list” firms and specifies that:

- a) *An interview will consist of a 15 minute presentation followed by questions and answers;*
- b) *The CCNA A/E Selection Committee will rank the firms interviewed as most qualified to least qualified to perform the service based upon interview results and the **criteria** [emphasis added] listed in Attachments 6 and 7. The ranking shall be performed on an evaluation form. Consultant compensation shall not be a consideration for ranking.*

The OIG noted that the “CCNA A/E Selection Committee” is required to use PPM #CW-O-048, “Attachment 6”, (uniform criteria and weighting) to evaluate the firms when making its “final selection” recommendation.

OIG Review:

On July 9, 2013, the OIG attended the “Short List Committee” meeting where members briefly discussed the fifteen (15) proposals with particular emphasis placed on the firms past performance and experience. After this discussion, the individual “Short List Committee” members were instructed to select six (6) firms by “checking” a box next to the firm’s name. Subsequently, the firms were ranked in order by the number of “checkmarks” they received. Firms receiving the most “checkmarks” made up the “preliminary short list”. This process resulted in seven (7)<sup>3</sup> firms making the “preliminary short list” for the Haverhill Project. After establishing the “preliminary short list”, the “Short List Committee” members formally evaluated and scored the firms using the criteria set forth in PPM #CW-O-048, Attachment 6, whereas “the appropriate number of firms<sup>4</sup> with the lowest point totals (determined by the rankings) will make up the ‘final short list’.” The “final short list” firms progressed to the **second step**: evaluation by the “CCNA A/E Selection Committee”.

The OIG determined that PPM #CW-O-048 requires the use of its specified criteria and weightings by the “Short List Committee” **only** after many proposals have been eliminated and a “preliminary short list” of firms established. As previously stated, in order to choose a “preliminary short list” where these criteria and weightings will be used, each “Short List Committee” member merely checks his or her preferred firms and submits this as his or her “scoring sheet”. Those firms receiving the most “checkmarks” on the “scoring sheets” advance to the “preliminary short list.” This procedure eliminated eight (8) firms, or 53%, without the benefit of having their proposals scored and ranked. Although this is consistent with PPM #CW-O-048, no uniform criteria is imposed during this stage of the selection process and no criteria are reflected in the scoring. Because this process fails to evaluate on uniform established criteria it does not comply with the requirements of section 287.055, Florida Statutes: the Consultants’ Competitive Negotiation Act.

---

<sup>3</sup> According to PPM #CW-O-048, when the User Department is selecting a single firm to provide services the “Short List Committee” will produce a “preliminary short list” of consisting of six (6) firms. However, for the Haverhill Project there was a tie for the last available “preliminary short list position”; therefore, the “preliminary short list” was expanded to include both firms.

<sup>4</sup> For the Haverhill Project, the EPW Department selected a single firm to provide the necessary engineering services; therefore, the “final short list” comprised of three (3) firms.

Chapter 287, Florida Statutes – Procurement of Personal Property and Services:  
Section 287.001, Florida Statutes, contains the following public policy statement:

“The 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; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured.”

As stated, Florida law recognizes that “fair and open competition is a basic tenant of public procurement.” Moreover, as Florida’s Third District Court of Appeal observed in *Marriott Corp. v. Metro. Dade County*, 383 So. 2d 662 (Fla. 3<sup>rd</sup> DCA 1980):

“Competitive bidding statutes are enacted for the protection of the public.... The bidder is assured fair consideration of his offer.... Under this system, **the public authority may not arbitrarily or capriciously discriminate between bidders, or make the award on the basis of personal preference.**” [EMPHASIS ADDED]

Finally, evaluating and scoring all qualified proposals provides a benefit to each firm and the County in that every firm benefits by receiving specific guidance as to the basis of an award, and the County benefits by receiving qualified proposals addressing a specific need. Moreover, by providing feedback to a firm, the County has the opportunity to assist in the creation of a larger pool of qualified candidates, which will enhance the economic and equitable procurement of services in the future.

#### RECOMMENDATION

The Palm Beach County Engineering & Public Works Department should amend Policy & Procedure Memorandum #CW-O-048, to fully comply with the requirements of section 287.055, Florida Statutes: the Consultants’ Competitive Negotiation Act.

Specifically, PPM #CW-O-048 should ensure the process used to establish the County’s “preliminary short list” is consistent with the requirements set forth in the CCNA.

**RESPONSE FROM MANAGEMENT**

On December 3, 2013, Tanya N. McConnell, P.E., Deputy County Engineer, provided the following response:

“Engineering has reviewed the draft report and is currently looking into the claims made. Changes will be made if and where necessary. We are already discussing a possible method to enhance the long list process.”

**OIG RESPONSE**

In determining whether and which changes are “necessary,” we suggest that the County look to the criteria set out in section 287.055, F.S., and revise its PPM to require uniform application of such criteria throughout the selection process, not only after most bidders have been eliminated and a “short list” has been arrived at. In 2001, Florida’s Fourth District Court of Appeal determined that a Broward County procedure, which similarly provided for arbitrary elimination of prospective contractors, was illegal. Although a different statute was involved, the principles are the same. The Court noted that under Broward’s procedure:

“Ultimately, the contract is let not to the lowest responsible or lowest competent bidder, but instead to the lowest bidder among those contractors preferred by the selection committee. Such a result ... circumvents the purposes of competitive bidding statutes. See Wester v. Belote, 103 Fla. 976, 138 So. 721, 724 (Fla. 1931) (stating that competitive bidding statutes must be afforded “a construction always which will fully effectuate and advance their true intent and purpose and which will *avoid* the likelihood of same being circumvented, evaded, or defeated”)(emphasis added). The new system injects into the proceedings the very subjectivity and personal preferences that the bidding statutes were designed to do away with.” *Engineering Contrs. Ass’n of S. Fla., Inc. v. Broward County*, 789 So. 2d 445 (Fla. 4<sup>th</sup> DCA 2001).

**ACKNOWLEDGEMENT**

The Inspector General’s Contract Oversight staff would like to extend our appreciation to the Palm Beach County Engineering & Public Works Department management for the cooperation and courtesies extended to us during the contract oversight process.

*This report is available on the OIG website at: <http://www.pbcgov.com/OIG>. Please address inquiries regarding this report to Joe Doucette, Chief of Operations, by email at [inspector@pbcgov.org](mailto:inspector@pbcgov.org) or by telephone at (561)233-2350.*