



Ethics Hotline Complaint #08-18

Ethics Complaint regarding City contract with England, Thims, & Miller (ETM) and Mark Middlebrook

Complainant alleged that the contract with ETM was in violation of Florida Statutes 287.057(18) because one of the drafters of the solicitation (Mark Middlebrook) now works as a sub-contractor to ETM. They further questioned how a contract originally awarded for \$100,000 has been amended over 21 times and now has a "not to exceed" amount in excess of \$6.4 million.

After consulting with the City's General Counsel's office, it was concluded that this section of the Florida Statutes does not apply to municipalities. The contract with ETM for program management services for the City's "Preservation Project" was awarded in May 2001. At that time, Mark Middlebrook was a City employee and one of five members of the Professional Services Evaluation Committee that interviewed the 2 top respondents to the Request for Proposal. It was the decision of the sub-committee to recommend to the Mayor that the contract be awarded to ETM. It was of interest to note, that Mark Middlebrook ranked the other respondent over ETM.

Even though the initial contract was for \$100,000, it was anticipated to increase annually as specific projects were added. The RFP from consultants was to provide program management and other related services necessary to manage, maintain, and operate the lands obtained by the City in the Preservation Project. The RFP stated, "The exact scope of services is not known at this time, but will be negotiated with the selected program management consultant to establish terms of the agreement for program management and other related services, and the consultant's fee therefore." It was further anticipated that the initial term of the contract would be three (3) years with an option for an additional seven (7) one (1) year periods.

Mr. Middlebrook left employment with the City in 2003 and his company (The Middlebrook Company) was awarded a sole source contract shortly thereafter (September 2003) in accordance with Section 126.312 City Purchasing Code. Because of his previous years of experience and intimate knowledge of the Preservation Project, his "sole source" status was approved by the City's Professional Services Evaluation Committee. The City continued the contractual relationship with the Middlebrook Company through March 2008. The Middlebrook Company is now a subcontractor of ETM.