



**OFFICE OF INSPECTOR GENERAL
CITY OF JACKSONVILLE**

**CONTRACT OVERSIGHT OBSERVATION
NUMBER 2015-04-0005**

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Inspector General

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"Enhancing Public Trust in Government"

ALLEGATION OF MULTIPLE VIOLATIONS OF PROCUREMENT CODE

Background:

On April 14, 2015, the Office of Inspector General (OIG) received a complaint via e-mail alleging improper conduct by the City of Jacksonville (COJ) Procurement Division (Procurement) in the award of a March 30, 2015, contract relating to rehabilitation or renovation design services for the Jacksonville Landing (Landing) project. Specifically, the complaint alleged Procurement violated Section 126, *Ordinance Code* (Procurement Code) as it had engaged in improper communication with the Downton Investment Authority (DIA) and had not provided sufficient notice of the Request for Proposals (RFP) regarding the project. Additionally, the complainant alleged Procurement violated the law by awarding a contract to a bidder who had been convicted of a crime against a public entity in violation of Florida Statute (F.S.) 287.133 (2) (a). The complainant further alleged Procurement was in violation of F.S. 287.055 (acquisition of landscape architectural services) and F.S. 489.103 (16) (contracting exemptions). Lastly, the complainant alleged that the COJ engaged in a practice of combining professional services for the purpose of excluding small firms.

Summary of Findings:

Based on its review, the OIG review found no facts to support the allegations in the complaint. The OIG review found no improper conduct by Procurement related to the Landing, no violation of F.S. 287.055 and F.S. 489.103 (16), and no evidence of a Procurement practice of putting together smaller projects for the purpose of excluding smaller vendors from the COJ procurement process.

Detailed Findings:

On April 22, 2015, the OIG contacted the complainant regarding an e-mail dated April 14, 2015. The complainant stated telephonically that Procurement and the DIA had made serious errors in the RFP process for the selection of professional designers to provide rehabilitation or renovation design services for the Landing. The complainant alleged three separate issues:

1. Procurement violated the Procurement Code because it
 - a) engaged in improper communication with the DIA and did not provide sufficient notice of the RFPs regarding the Landing;
 - b) violated Florida law by awarding a contract to a bidder who had been convicted of a crime against a public entity in violation of F.S. 287.133 (2)(a);
2. Procurement was in violation of F.S. 287.055 (acquisition of landscape architectural services) and F.S. 489.103 (16) (contracting exemptions); and
3. COJ engaged in the practice of combining professional services for the purpose of excluding small firms.

The first issue was concerning the actions of Procurement in relation to the Landing. The complaint did not identify or provide any specific contract at issue relating to the Landing. The OIG performed a search of Procurement records but was unable to find any contract related to the Landing. Subsequent statements from the complainant alleged the project that is the subject of this complaint is property located along the north bank of the St. John's River at 750 East Bay Street in Jacksonville, Duval County, Florida (the "Shipyards"). This project was the subject of a separate complaint, and Contract Oversight Observation 2014-12-0004-O (July 1, 2016).

The OIG review found no evidence to substantiate the allegation that Procurement engaged in improper communication with the DIA or provided insufficient notice of the RFPs regarding the Shipyards. As noted in Contract Oversight Observation 2014-12-0004-O, the DIA, assisted by Procurement, advertised the solicitation for RFPs for 30 days beginning March 10, 2015. Pursuant to the solicitation, the responsive bids were opened on April 15, 2015¹. The OIG review determined both the solicitation and the bid opening were in compliance with the applicable provisions of F.S. 286.011 (Sunshine Law).

The complainant alleged that Procurement had improper communications with the DIA based on an April 14, 2015, telephone call when the complainant was informed that the "Director and the Board Chair were in their meeting making the selection that related to my inquiry." The OIG contacted both the Chief of Procurement, and the Chief of DIA, regarding any meeting between them on April 14, 2015. Both the Chief of Procurement and the Chief of DIA confirmed that there was no meeting on April 14, 2015. The Chief of DIA did state that he was present at the public bid opening on April 15, 2015, but could not recall whether other Board members of the DIA were present. There is no record of any meeting between the DIA and Procurement nor the DIA Board Chairman and the Chief of Procurement on April 14, 2015. There were no protests regarding the bidding or award of the Shipyards. Based on the OIG review, the process used for solicitation of bids for the redevelopment of the Shipyards, including the opening of bids on April 15, 2015, complied with the applicable laws.

The OIG review found no evidence to support the allegation that Procurement violated Florida law by awarding a contract to a bidder who had been convicted of a crime against a public entity in violation of F.S. 287.133 (2)(a). F.S. 287.133 (2) (a) provides that a vendor "who has been placed on the convicted vendor list following a conviction for a public entity crime" may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity. The winning bid, Iguana Investments Florida, L.L.C. is not on the convicted vendor list.

Section 126.104(b), *Ordinance Code*, similarly provides that the COJ shall not enter into a contract with an "individual who has been convicted of a public entity crime within the past three years in a local, state or federal court;" While Section 126.104(b), *Ordinance Code* does not require the vendor to be on the convicted vendor list, as F.S. 287.133 (2)(a) does, the ordinance does not apply in this circumstance because the Shipyards project did not result in a contract with the COJ.

¹ The Contract Oversight Observation 2014-12-0004-O, incorrectly noted that the Evaluation Committee of the DIA met with the Chief of Procurement on April 16, 2015. The meeting Contract Oversight Observation 2014-12-0004-O referred to was the April 15, 2015, bid opening pursuant to the solicitation.

The second issue raised by the complainant was the allegation that Procurement was in violation of F.S. 287.055 (acquisition of landscape architectural services) and F.S. 489.103 (16) (contracting exemptions). The complainant provided no evidence or documentation to support this allegation. The complainant asserted that these alleged violations were associated with a specific vendor in contract with the COJ. An OIG review of the COJ e-procurement system, the Procurement contract records (Executed Contracts from fiscal year 2014 through fiscal year 2016), and Procurement Sole Source/Proprietary Contracts, indicated the vendor referred to in the complaint does not have a contract with the COJ.

Lastly, the complainant alleged the COJ engaged in a practice of combining professional services for the purpose of excluding small firms. The complainant provided documentation in the form of e-mails from August to November of 2007, confirming multiple discussions between the claimant and the COJ regarding the COJ practice of soliciting bids for multiple projects in one bid (what the complainant refers to as “lumping” professional services work). The complainant asserts that this practice has the impact of excluding smaller firms like his from being able to obtain COJ contracting work. The e-mail exchange indicated that the COJ denied engaging in the practice in general, and specifically denied that such a practice would be for the purpose of eliminating any contractor from obtaining contract work with the COJ. The OIG review of this allegation was limited because the events set forth in the allegation occurred almost ten years ago. In June of 2017, the OIG spoke with the Chief of the Procurement Division regarding this alleged practice. The Chief stated the practice of “lumping,” as described by the claimant, is not used or condoned by Procurement. The Chief pointed out that there are factors, such as economies of scale and multiple departments being in need of the same bid item, which may make the combining of smaller projects fiscally responsible. However, discouraging or preventing an individual firm from participating in a project is not a factor that is taken into consideration by Procurement. The Chief also referred the OIG to Section 126.608(b), *Ordinance Code*, which provides that when implementing the Jacksonville Small Emerging Business Program the Director of Procurement “shall provide opportunities for direct or prime contracting.” These opportunities are created by “breaking procurement packages into smaller components, . . . where feasible.”

The documentation provided by the claimant and the statements of the current Chief of Procurement, indicate there is not a Procurement practice of putting together smaller projects for the purpose of excluding smaller vendors from the COJ procurement process. The OIG review of this claim did not find any additional documentation or evidence of such conduct, nor did the complainant offer any additional documentation or evidence.

Conclusion:

The OIG review found no facts to support the allegations in the complaint. The OIG review found:

1. No improper conduct by Procurement related to the Landing or the Shipyards:
 - a. The OIG review found no evidence to support the allegation that Procurement engaged in improper communication with the DIA or provided insufficient notice of the RFPs regarding the Shipyards.

- b. The OIG review found no evidence to support the allegation that Procurement violated Florida law by awarding a contract to a bidder who had been convicted of a crime against a public entity in violation of F.S. 287.133 (2) as the winning bidder was not on the convicted vendor list.
2. No violation of F.S. 287.055 (acquisition of landscape architectural services) and F.S. 489.103 (16) (contracting exemptions) by Procurement because the vendor referred to in the complaint does not have a contract with the COJ; and
3. No evidence of a Procurement practice of putting together smaller projects for the purpose of excluding smaller vendors from the COJ procurement process.

OIG has concluded its review of this matter and determined that no further action by the OIG is warranted.