

Questions for the Mount Dora, FL City Manager & Purchasing Manager

Public Works RFQ's 2019-PW-014 and 2019-PW-036

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Purpose: This is a follow up to my prior list of questions to get clarifications or responses to my prior list of questions not answered at the Feb. 4, 2020 City Council meeting. Some earlier questions have been removed, and others have revised wording. Every question does have a question requesting a response.

Questions:

A. Evaluation Committee selection, changes & qualifications:

- a. The city policy specifies the City Manager selects the entire evaluation committee from city employees. It was selected for this specific project, and apparently the city has no standing evaluation committee used for all projects. **Why are no outsiders with construction experience appointed** by the Council to provide some independence in the process? **Policy does not require this step. We also had three evaluation committee members who all had/have multiple years' construction experience.**
- b. Why would there not be a requirement to appoint qualified outsiders if a project exceeds a certain budget, like \$2-million? **Policy does not require this step. We also addressed this concern by having multiple evaluation members with construction experience.**
- c. There was only a list of evaluation committee names, without titles or documentation on their ability to provide

construction related advice. Please provide the names of the Evaluation Committees for both RFQ's and their qualifications to evaluate a \$11-million Construction Management bid and titles. Evaluation Committee members for RFQ 014 were Steve Langley, Electric Utility Deputy Director, Matt Dickey, Finance Director, Amy Jewell, Leisure Services Director, Mark Rudowske, Environmental and Public Works Director, and Joe Grusauskas, Utilities Director. Steve Langely, Mark Rudowske and Joe Grusauskas all have/had background in construction projects within their respective areas.

- d. Why was the composition of the evaluation committee changed from RFQ 014 to RFQ 036? It was stated that the committee was changed for the second FRQ to get a fresh start, but several were duplicates. The result was a partially new committee with heavily skewed results that appeared to be aimed at only selecting one firm. If the staff really wanted only one firm, why have the evaluation committee at all? Evaluation Committee composition was necessary due to Mr. Rudowske's decision to leave employment with the City in addition to other obligations already scheduled for members. Under RFQ 036 all evaluation committee members were new with the exception of one. Steve Langley, Electric Utility Deputy Director was the sole member remaining from the initial RFQ 014. The remaining (new) committee members were Robert Harper, Acting Public Works Manager, Troy Shonk, Leisure Services Manager, Vince Sandersfeld, Planning & Development Director and George Marek, Sr. Project Manager. Robert Harper has a construction background of thirteen years

(private and public). George Marek has multiple years' construction project management experience working for FDOT. Each committee member brings a unique perspective to the evaluation process.

- B. **Documentation** of the RFQ process, committee, policies, ranking details and results
- a. Many documents like announcements, ranking forms, RFQ's, etc. lacked audit trail details such as dates (has been corrected), initials (has been addressed and will be included moving forward), revision numbers (current electronic files contains all draft revisions with numbers/dates. They have now been transferred to the hard file as well.) The binders contained task checklists, but they were not used at all. New staff member misunderstood purpose of the referred to task checklist. This has been corrected. Why was such information to document an \$11-million decision lacking? Without it, it is hard to verify the timelines of activities. Why is such a lax process used for documenting an \$11-million contract? Is there a need for a policy to have a better documentation process for major projects? I do not believe this falls within a policy requirement. This is a procedural process. Without clear documentation, no objective reviewers can determine the basis for decisions and changes, and thus could perceive that decisions were not transparent. Will new policies be established to implement sound documentation features to address the above issues like creation dates, revision numbers, printed names of those who fill out forms and clear documentation explaining decisions and actions? Procedural changes will ensure this is addressed moving forward.

- b. The interim and final ranking totals were shown on a printed PC spreadsheet, but there were no intermediate recap sheets to show individual committee member scores for each category, total them and carry forward the final totals from the committee worksheets. (Note: I did not attempt to recalculate the totals) Without access to the underlying worksheets, we could not determine if standard quality control procedures for accuracy were used. Thus we could not easily verify the accuracy of the ranking process. The lack of visible control procedures for an \$11-million bid process is concerning to me. What will be done to ensure clear documentation is created calculation worksheets, with signoffs on accuracy, etc. in future projects. **Such intermediate scoring spreadsheet(s) are located in the electronic files and have now been placed into the hard file(s).**
- c. Some pages were missing from both RFQ packages. For instance, pages 21-23 were missing from both RFQ 014 and RFQ 036. Why? **This was due to a mis-numbering of pages when the document was saved or converted to a PDF.** Good practice is to insert “This page not used” for blank pages, but missing pages is not good practice for legal documents. How will this be improved for future projects? **Procedural changes have been put into place to verify formatting issues moving forward.**
- C. Negotiations Process** – The Council approved Ajax as the winner of RFQ-PW-036 in negotiations with the city. Who conducted the negotiations to ensure competitive prices were proposed, and what is their expertise in negotiating construction contracts exceeding \$11-million? This answer was not provided at the Feb.

4th meeting, so please respond. As of the February 4th meeting this action had not occurred. Council approved this action during that meeting. The negotiation necessary at this time is only for pre-construction service costs...not the construction cost. Construction cost is based upon the CMAR providing a Guaranteed Maximum Price (GMP) for the construction portion of the project. The GMP cannot be submitted for Council review and approvals until design plans are completed. Plans are expected to take eight to nine months to complete.

- D. **Changes in RFQ's from 014 to 036** – What were the changes?– we did not see any documentation explaining what changed from one RFQ to the second one. We did find major changes in the tie-breaker sections on page 20 (see attached). Normal practice we have seen in other agencies to show revisions is to provide a draft with lined out or underlined text to show deleted and added wording. There was no document in the binder explaining all changes made to the second RFQ. If there is one, again, please provide it to us. Why would the bidders or evaluation committee members not request documentation of RFQ wording changes? Will procedures be changed in the future to adopt a formal method for documenting changes in RFQs, contracts, etc.

Evaluation Committee members were notified of the changes during a meeting. Review audio files.

- E. **Formal Oral Presentation Ranking system:** This was defined on page 20 in both RFQ packages. But it only said scoring was $4 \times 2.5 = 10$ points, with no other information, forms or categories and definitions. Why were there no specifics and there was not a clear narrative of how it was used in both RFQ oral presentations. This could be interpreted by potential bidders that the oral presentation rankings would be arbitrary and capricious. Please

describe how that worked for the final scoring tabulation. Will better details be included in future RFQ packages to ensure all bidders know what is ranked in the oral presentation meetings? **Oral presentations are scored based on the above 4 (maximum of four points can be given by evaluators for each presentation) times a weight of 2.5 for a maximum of 10 points. Each oral presentation can be awarded up to a maximum of 10 points.**

F. Tie-Breaker – This was defined on page 20 of RFQ-014, and on page 20 of RFQ-036 (see attached). They were completely changed. I did notice one ranking sheet in the first RFQ where two finalists had the same score, so wouldn't the tie breaker be implemented and documented? **The tie breakers were utilized and discussion documented via audio files.** There was no documentation explaining details for the Purchasing Manager's statement on Feb. 4th that the first RFQ tiebreaker was not applicable. **Audio files of the Evaluation Committee meeting reflect the discussion relevant to this question.** As an experienced internal auditor, it appeared to be an arbitrary decision which is concerning. Please provide a clear history of why the tie breaker was not applicable. It seemed pretty clear to me. **To clarify my February 4th statement...the tie breakers were applied but failed to break the tie.**

G. Activity log: There was no written and dated log of actions and decisions taken on the two RFQ's. Thus it was impossible to determine why changes were made in rankings, RFQ's or other decisions. Is there one? If so, please send to me. **Information contained in the electronic files have now been included in the hard files. In conjunction with the audio files there is a clear log of actions and decision taken on both RFQ's.** When reviewing the RFQ folders, it was hard to determine when decisions, changes,

etc. were made, especially since most documents lacked any date (this is now corrected moving forward). It appears there are no professional standards to document municipal procurement decisions. Will City procedures be improved to ensure that an activity/action log be included in the binders much like legal and internal audit files use? Improved tracking log has been initiated and staff will utilize.

- H. **Conflicts in RFQ package footers**: For RFQ 036, many of the pages had a footer “037” – but the title was correct. Was there another version 036 that was then replaced by a different 037 package? Please explain why conflicting RFQ numbers were shown. Staff error and missed upon review.
- I. **Conflicts in litigation period** – In RFQ 036, one page said the contractor should provide history for five years of litigation, and in another page, it said 10 years. The addendum included that issue as noted by one of the bidders, and the city response was 10 years. The litigation period was extended from five to ten years and change was not applied to all forms in error. The staff should consider an independent proof reader to catch important conflicts like this. The requesting department and the Purchasing Manager reviews each solicitation. More time will be taken to review appropriately. How will such glitches as the page numbering and litigation period conflicts be prevented in future procurement projects? Better review by all pertinent parties, litigation period was changed – extended from 5 years to 10 years.
- J. **Litigation section compliance** –
- a. **This is my original question for reference**: The city has an RFQ section asking the bidders to provide information on any litigation in the past 10 years. One bidder provided

what I considered to be very vague statements. The City attorney issued a memo that was in RFQ 014's folder saying there was a problem with that contractor's response, and showing actual litigation not disclosed. Theoretically, I would think that would remove the contractor for consideration, but no documentation was provided on the issue. Then the contractor submitted the same vague comments for RFQ 036. I would think they would have been eliminated from consideration. FYI – I was on the Lake County School District Internal Audit Committee when that firm, AJAX, was involved in litigation with them over a school construction project. That case was settled in 2012 for \$170,000, but the settlement agreement (which I have) was not clear on the reason for the payment. (See attached). Have you talked to the LCSD attorney, Steve Johnson, about that Leesburg High School project case for a \$26-million construction project that started in 2004? It is case #35-2010-CA-002296 and the original 2010 complaint was 203 pages long. Ajax claimed in their answer that this case was in retaliation for an Ajax filed case over a Carver Middle School Project. There was no documentation in the Mt. Dora RFQ packages indicating awareness of and review of these cases. Did Mt. Dora staff review litigation cases involving Ajax and make any decision on relevance to Mt. Dora construction plans? Please provide me any analysis of litigation including apparent reasons not to consider it. A search on Circuit Civil Cases for "AJAX BUILDING CORPORATION" on the Lake County Court Clerk website found 9 cases, all from 2010 and 2007. And that is just in Lake County. Didn't staff review

these vs statements in the Ajax bid package? If so, what action was decided and why?

b. **This is my follow-up question after the Feb. 4th meeting:** At the meeting, the City Attorney said

- i. There was no requirement to consider litigation history as part of the ranking process thus she implied litigation history was not important in the decision process. Will this be addressed in future RFQ ranking procedures with a category and score for litigation history risk?
- ii. She did not expand research on bidder litigation history due to perceived cost issues. I really question that decision. As an experienced internal auditor, it appeared to me to be an arbitrary decision which is concerning. Why would the city want to avoid knowing the litigation history of a bidder? Will the City revise RFQ procedures to require VERIFICATION of bidder litigation statements, plus do an expanded search of neighboring counties and/or the state based upon stated project budgets?
- iii. Will the City contact the Lake County School District attorney and discuss their experience with AJAX and the multiple litigation filings about 10 years ago. Wouldn't the City staff want to know what reasons existed for the litigation (more than one disputed project) and the results and recommendations for working with Ajax?

K. **Audio Recordings** – Are they made of the evaluation committee meetings? **Yes, a recording is made for each Evaluation**

Committee meeting. The RFQ binders had a tab for them, but they were not there. **The individual flash drives were not provided but the audio files were forwarded, via FTP, to the Clerk's Office.** Please provide me a copy of the audio recordings of each evaluation committee meeting for both RFQ's if they exist.

L. **Reference Checking** – The bidders were required to provide references. Were they verified by staff and what were the results? **Yes, we verify those that are provided on our solicitation form included for this purpose. Positive responses were received from the references provided.**

M. **Online Reputation Review:** There was no documentation of any independent staff review of online reputations of the bidders. Just by searching on “ContractorName Complaints” and other methods, you can verify the reputation of the firms. There are consultants that specialize in that, and perhaps they should be used for projects over \$1-million. For instance, searching on “XXX Corporation Reputation” you get a list and the first one is indeed.com ratings of employers and one example (Ajax) only had a 3.8 out of 5, which could be a red flag. Some of the comments are quite instructive. I suggest Mt. Dora staff create an online reputation checking form for all contractors and vendors, including information on Indeed, Glassdoor, BBB, Facebook and others. Such reviews should also include parent companies and the impact of recent ownership changes should be reviewed in relation to future projects (Ajax was sold two years ago to a New York holding company). Will the city create a requirement based upon budget size to perform a reputation search on bidders? **I find this somewhat subjective at best. Anyone with a grudge or possibly being paid can provide a bad or a good review on most of**

the referenced sites. Current budget has not been set to include hiring a consultant to perform this type of “check.”

- N. Contract Compliance** – What plans exist to ensure the CM complies with the contract during and after contract completion? We currently have a new Project Manager (12+ years’ construction experience) who will specifically address special construction projects such as the Public Works Facility. The School District and the County have internal auditors who do that, but who does Mt. Dora have for such a large project? Finance Department will work with the Project Manager to address this concern. Who will conduct quality control and cost control audits during and at the end of the project. What are their qualifications to do so? For quality control the Project Manager (12+ years’ construction experience), the CMAR and the architect and engineer of record will all address the quality control needs. The Project Manager, Finance Department, Purchasing Department, and various Department staff will address cost control need.
- O. Construction Defects History (new)**: A major issue with construction quality is how well the work was done. If sub-standard work or materials are used, the usefulness of buildings is reduced, such as roof leaks (Lake County, various fire stations, mold, sinking foundations, improperly secured docks (Tavares) etc. There was no evidence of any work to research construction defect history of the bidders or the sub-contractors to be used. Will the City implement such a step in the RFQ process? To be determined based on available resources.

Conclusion:

1. I have not detected any intention by staff or the bidders to bypass controls or alter selection decisions but believe that such a large

project using taxpayer funds needs more oversight. Better documentation is needed to ensure all decisions can be understood and justified.

2. Once I have written responses to these questions, I will write my shorter, independent review of this process and I would like to discuss them with the City Manager, Mayor and Purchasing Manager. I then will provide a final copy to staff for review before publishing it on FiscalRangers.com. (Not all the above questions will be included in the final published report if I get satisfactory responses).

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Attachments:

Tie Breaker excerpts from both RFQ's