




Memorandum



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To: The Honorable Carlos A. Gimenez, Mayor, Miami-Dade County
The Honorable Audrey M. Edmonson, Chairwoman
and Members, Board of County Commissioners, Miami-Dade County

From: Mary T. Cagle, Inspector General 

Date: December 2, 2019

Subject: December 3, 2019 – BCC Agenda Item 8F9
OIG Observations of the Procurement Process for the Design, Build, Finance,
Operate and Maintain Civil and Probate Courthouse Pursuant to RFP No.
000953; Ref: IG18-0012-O, IG18-0013-O, and IG19-0006-O

Introduction & Basis for OIG Involvement

By way of this memorandum, the Office of the Inspector General (OIG) advises that we actively monitored the procurement process for the “Design, Build, Finance, Operate and Maintain Civil and Probate Courthouse” pursuant to RFP No. 000953. This public, private partnership (P3) procurement process is the first of its kind for Miami-Dade County. Overall, we found no exceptions to the integrity of the procurement process, and we take no issue with the recommended contract award. With that said, we would like to take this opportunity to share some observations.

The OIG began monitoring and providing oversight of the process for the acquisition of a new civil and probate courthouse in early January 2018, when the OIG first learned that the County received an unsolicited proposal entitled “A Proposal For Delivery of A New Courthouse and Associated Facilities for Miami Dade County, Florida” from the New Flagler Courthouse Development Partners, dated January 5, 2018. The OIG’s mandate to monitor the unsolicited proposal, and the overall P3 procurement process, lies in Ordinance 17-94, which was enacted in December 2017. As codified in Section 2-8.2.6(3) of the County Code:

The Office of the Miami-Dade County Inspector General shall have the full authority, functions and powers enumerated in Section 2-1076 of this Code, as may be amended, relating to the investigation, oversight, auditing and any other powers granted to it by this Code relating to the processes, procurement procedures and agreements set forth herein.

The OIG's monitoring activities quickly expanded to include RFQ-00820 (the predecessor procurement) for the "Design, Build, Finance, Operate and Maintain Civil and Probate Courthouse" which ran while the unsolicited proposal was under review. Shortly thereafter, the County rejected the unsolicited proposal and rescinded the RFQ. A new two-phase RFP was issued in its place. Notably, in the RFP, the site of the new courthouse was determined to be located between West Flagler Street and NW 1st Street, just west of the existing Courthouse. Throughout our monitoring of this project's procurement processes, our objectives were to promote transparency, ensure integrity, and where possible, add value by making recommendations to strengthen the RFP process and by providing independent and external due diligence.

OIG Recommendations – Key Provisions in the RFP Document

From the outset, being the first of its kind and due to the highly complex nature of the competing processes, the OIG endeavored to ensure that any competition would be open, transparent, equitable and fair to warrant the highest quality product and value to the taxpayers of Miami-Dade County. Moreover, this procurement was unique in that, while a County project, the main tenants in the building would be the State of Florida, Eleventh Judicial Circuit, the Clerk's Office and the Administrative Office of the Courts. Unlike Miami-Dade County officials, these officials were not covered under the County's Cone of Silence—a key prohibition intended to shield against undue influence during the procurement process.

To this end, the OIG recommended—and ISD accepted—strengthened language in the RFQ (and subsequently in the RFP) that went beyond the prohibition on communications contained in the Cone of Silence.¹ This is evidenced in the RFQ-0082, Section 1.6 that stated that "Respondents and all firms or members of the Project Team ("Team Members") shall refrain from communications with key stakeholders."² Subsequently, this language was further strengthened in RFP-00953 to provide potential penalties for violations. Section 1.6 Key Stakeholder, then stated, in part:

Respondents and all firms or members of the Project Team ("Team Members") shall refrain from communications with key stakeholders. All proposed communications and questions to key stakeholders shall be submitted in writing to the County's contact person for this RFP ("Procurement Manager") (see RFP, Part A, Section 4.6). A communication in violation of this Section which is determined by the County, in its sole discretion, to constitute an attempt to obtain an unfair competitive advantage may result in the disqualification of the Respondent. (Emphasis added.)

¹ Section 2-1.11(t) of the Code of Miami-Dade County.

² Key Stakeholders are defined as: 1) Miami-Dade County; 2) The State of Florida, Eleventh Judicial Circuit; and, 3) Miami-Dade County Clerk of the Courts and Administrative Office of the Courts.

With this prohibition of communications included in the RFP-000953, the OIG sent a letter to the Chief Judge and the Clerk of Courts alerting them to this unique procurement provision and asked that they share this information with their employees. We also requested that any attempted communications by potential respondents to the RFP be reported to the OIG as we are fully authorized to investigate all matters involving this procurement project.

Further, the OIG working in concert with ISD, also strengthened the RFP language pertaining to county consultants and advisors. Given the unique nature of this P3 procurement, the County had engaged its own technical, financial and legal consultants and advisors. The need to ensure that none of the County's consultants and advisors would be involved with a proposer in order to safeguard the process from potential conflicts was identified. Section 7.3.6 "County Advisors and Advance Restriction" was strengthened to provide for penalties if such were the case. That section was revised, in part, to read:

*None of the firms listed in this Section [referring to the County's consultants and advisors], or any person currently or formerly employed or contracted by those firms with any material responsibility in connection with this Project, are eligible for inclusion on a Project Team or otherwise performing any services on the Project for a Project Team. **Inclusion of any such person in violation of this restriction may, in the County's sole discretion, result in disqualification of the Respondent.** Contact with any such person may constitute a violation of the County's Cone of Silence (see RFP, Part A, Section 7.1). (Emphasis added.)*

OIG Independent Assurance Reviews

During the course of the procurement, the OIG learned of two other incidents that could potentially affect the procurement. For each incident, the OIG conducted its own quality assurance review of the matter, and both of our reviews were conducted independent of the OIG's on-going procurement monitoring efforts. In both cases, we did **not** find that the incidents had an adverse impact on the procurement process.

The first incident involved what was characterized as an inadvertent email transmission of confidential information by the County's financial advisor, KPMG LLP. The confidential material, contained in the unsolicited proposal to build a new courthouse, was attached to an email that had been sent to an unintended party. The OIG undertook this review to obtain sufficient assurances that the transmission was indeed an accident. We also sought to verify—to the extent possible—that the confidential material contained in the email's attachments were not read or disseminated, and that any and all unauthorized copies of the email had been permanently deleted. Based on our independent review, which included taking sworn interviews of those involved, examining all available information, and obtaining third-party assurances from information technology specialists, the OIG was sufficiently assured that this incident was indeed an unintentional,

inadvertent disclosure. Based on the information available, there was no evidence to support that the unintended recipient, or any other individual associated with the recipient, accessed, shared, or inappropriately handled the email message and attachments in question once notified of the error. The OIG issued its report on this matter on July 5, 2018.³ Subsequent to this incident, the County terminated its courthouse engagement of KPMG LLP, and engaged a new financial advisor, BMO Capital Markets Corp, for the remainder of the courthouse project.

The second incident involved the revelation by the Clerk of Courts that his office's outside counsel (Bilzin Sumberg Baena Price & Axelrod, LLP, hereinafter "Bilzin") also represented proposer M-S-E Judicial Partners, LLC. This not only caught the Clerk of Courts off guard, but it was also a revelation to many involved in the courthouse project who had not earlier made the connection. Concerns were raised given the fact that the Clerk's Office is a key stakeholder in the new courthouse project and Clerk's Office personnel were part of the RFP's selection committee. At the request of the Clerk of Courts, the OIG initiated a review to determine whether Bilzin's representation of M-S-E Judicial Partners, LLC (M-S-E) posed prohibited conflicts given its simultaneous and longstanding representation of the Clerk of Courts. The OIG examined if there were any communications by M-S-E/Bilzin that were in violation of provisions in the Conflict of Interest and Code of Ethics Ordinance and provisions in the bid documents. Conversely, we also looked for communications disclosing said representation.

The OIG issued a final report in this matter on August 13, 2019.⁴ The OIG's review did not find evidence of prohibited conflicts or violations as governed by the County's Conflict of Interest and Code of Ethics Ordinance; nor did we find any violation of any of the restrictions in the bid documents. Notwithstanding our conclusions, our review determined that during the procurement process, there were opportunities early on to dispel the perceived conflict had certain disclosures been communicated up through the chain of command. Last, our review identified several areas for improvement with regards to the nature of conflicts and their disclosure for future procurements. The OIG is already working with ISD on some of these areas. Prior to the conclusion of the OIG's review, in an abundance of caution, the Clerk of the Courts withdrew his staff from further participation on the RFP's selection committee. The timing of this decision was just prior to the start of the second phase of the RFP.

OIG Monitoring & Attendance of Procurement Meeting

Throughout the entire process, the OIG attended and monitored numerous meetings whether it be for internal strategy, stakeholder meetings, evaluation and scoring of proposers, negotiations with shortlisted proposers, evaluation and scoring of shortlisted

³ See IG18-0013-O at <http://www.miamidadeig.org/Reports2018/CourthouseDisclosureIncidentAssuranceReview7.3.18.pdf>

⁴ See IG19-0006-0 at <http://www.miamidadeig.org/Reports2019/CivilandCountyProbateCourthouseFinal%20Report19-0006-O.pdf>

proposers, or negotiations for the final product. Meetings attended and monitored by the OIG included:

RFQ-00920

The OIG attended the Pre-Bid Conference/Site Visit and three (3) meetings of the CSC for this short lived RFQ.

It must be noted that during this period when the County engaged new financial advisors (as previously discussed), the OIG initiated a discussion, during an internal strategy meeting, on the merits of the subsequent consultant's reliance on the Value for Money (VfM) analysis performed by its predecessor. Although this would be an added cost, given the importance of the financial analysis to a project of this size, the OIG urged that the County task its new consultant to validate the VfM analysis and/or conduct its own VfM analysis.

RFP-00953 Part 1

In the development stage of the RFP, the OIG met with internal staff, during which recommendations were made to strengthen the prohibition on communications between stakeholders and potential proposer teams, as previously discussed, for Sections 1.6 and 7.3.6 of the RFP.

Concurrent with the release of the RFP for Phase 1, the OIG began attending weekly stakeholder working group sessions. This series of seven (7) meetings included the judiciary, Administrative Office of the Courts, the Clerk of Courts, the State Attorney's Office, and the County's Information Technology Department. These meeting were designed to solicit input from the "users and support functions" of the facility to ensure that all their needs were addressed.

On November 7, 2018, prior to the Dade County Bar Association's public meeting on the new courthouse, the OIG communicated with the County Attorney's Office and the judiciary to ensure that everyone in attendance at the meeting would be made aware that the prohibition on communications by proposers, pursuant to Section 1.6 of the RFP, was in place. The recommendation was implemented; and when a lobbyist for one of the proposers attempted to speak, he was reminded of the prohibition. The lobbyist representative complied by not speaking at the event where stakeholders were present.

The OIG attended all meetings of the CSC for evaluating and shortlisting the five (5) proposals received. Three (3)

proposers made the shortlist, and they advanced to the second phase of the RFP process.

RFP-00953 Part II

Prior to the release of the RFP Phase 2 solicitation documents, ISD conducted a series of individual meetings with each of the three shortlisted proposers to discuss and receive feedback on the “Technical Provisions” of the project, the “Project Agreement,” and the “Instructions to Proposers.” The outcome of these discussions was incorporated into the RFP Part II. Understanding that these were not public meetings with the potential for a multitude of very technical discussions by multiple individuals and the necessity for accurate notetaking, the OIG, with the concurrence of ISD, opted to video-record every session. The OIG video-recorded over fifty (50) hours of meetings.

The OIG also attended all CSC meetings to evaluate and score responses to the RFP Part II, including oral presentations.

As may be deduced from the activities listed above, the OIG’s independent monitoring of the procurement process was highly visible to all parties—County staff, external stakeholders, and all those proposing to design, build, and operate our new courthouse facility. As stated at the onset of this memorandum, the OIG finds that the procurement process was open, fair, equitable and transparent. The OIG believes that this is evidenced by the fact that there was no bid protest. We take no issue with the recommended contract award, and we look forward to monitoring the construction of this project in the near future.

Last, the OIG wishes to express our appreciation to the County’s staff, its consultants and advisors, the Eleventh Judicial Circuit, the State Attorney’s Office, and the Clerk of Courts. We would also like to thank all the proposers to the RFP for their cooperation during the procurement process, the OIG’s reviews, and subsequent negotiations.

cc: Hon. Bertila Soto, Chief Judge, Eleventh Judicial Circuit
Hon. Jennifer Bailey, Administrative Judge, Eleventh Judicial Circuit
Hon. Katherine Fernandez Rundle, State Attorney, Eleventh Judicial Circuit
Hon. Harvey Ruvin, Clerk of Courts, Eleventh Judicial Circuit
Edward Marquez, Deputy Mayor
Tara C. Smith, Director, Internal Services Department
Jose Arrojo, Executive Director, Commission on Ethics and Public Trust
Yinka Majekodunmi, Commission Auditor