

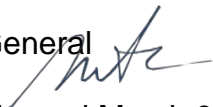


Memorandum



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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: March 11, 2020 (originally issued March 9, 2020)

Subject: **REVISED** OIG Observations and Comments to RFP No. 01058 for the Purchase of an Advanced Traffic Management System (ATMS), Recommendation for Award Scheduled for the Infrastructure and Capital Improvements Committee Meeting of March 10, 2020, Agenda Item 3A; Ref. IG18-0018-O

This memorandum is being reissued as revised to address a mistake made by the OIG in the original memo pertaining to a statement made about change orders. (See OIG Issue 3, page 10 for the revision shown underlined.)

INTRODUCTION

By way of this memorandum, the Office of the Inspector General (OIG) provides our independent observations and comments on the above-captioned procurement for an Advanced Traffic Management System (ATMS). The OIG has been monitoring the procurement of the subject ATMS project for the past two years.¹ The OIG's active involvement in this project first began in May 2017 when the OIG questioned the \$11 million bid waiver acquisition by the Department of Transportation and Public Works (DTPW) for 300 traffic controllers and 675 video detection cameras, for 10 of the most congested corridors in Miami-Dade County. This \$11 million bid waiver contract was the predecessor to what would be a countywide upgrade for all of the County's intersections.

The current procurement effort for the balance of the County's 2,900 intersections began in the summer of 2018. It has involved the development and issuance of two Requests for Proposals (RFPs) (the first being rescinded prior to proposals being received, and the second RFP [No. 01058], which is the subject of this memorandum). The initial Recommendation to Award to Siemens Mobility, Inc. (Siemens) was protested by the second-ranked firm, Horsepower Electric, Inc. (Horsepower). The Hearing Examiner sustained one of Horsepower's charges. The Mayor subsequently rescinded his recommendation and directed the Negotiation Committee to re-engage in negotiations

¹ In accordance with Section 2-1076 of the Code of Miami-Dade County, the OIG has the authority to make investigations of County affairs, review proposed County programs, accounts, records, contracts, and transactions, and recommend to the Board of County Commissioners whether a particular project, program, contract or transaction is necessary and whether the method for implementing the project or program is financially and operationally efficient. The OIG may also attend all meetings relating to the procurement of goods and services, and exercise all the powers conferred by Section 2-1076, including posing questions and raising concerns consistent with the functions, authorities, and powers of the OIG.

with Siemens to address the defect determined by the Hearing Examiner. The current Recommendation to Award is for the renegotiated agreement with Siemens.

The OIG finds that this Recommendation to Award is a best effort endeavor by the County to obtain a fair, reasonable, workable, and affordable agreement. It was arrived at through the diligence and thoroughness of the County's selection committee and negotiation team. Given the technical complexity of the scope of services and the expedited time frame for the RFP solicitation, as well as the in-depth, lengthy negotiations that transpired, the resultant agreement provides a reasonable basis on which the County can proceed with its ATMS project. Notwithstanding the Hearing Examiner's finding of a defect in the process, the revised agreement, which addresses the defect through subsequent negotiations, is sound.

With that said, the OIG would like to provide observations about the procurement that address some of the concerns that have been voiced about the process. We have four observations.

1. Both Siemens and Horsepower were evaluated favorably. While, Horsepower bested Siemens in the second evaluation round based on their combined technical scores, three out of five CSC members scored Siemens higher than Horsepower.
2. The County's price negotiations with Siemens were extensive and eventually allowed only marginal variation from the original price proposal.
3. There is no such thing as a "no change order" guarantee.
4. Both respondents relied upon a shorter timeframe for DTPW's review. Siemens introduced the shorter duration in response to the County's request for additional information. Horsepower included a shorter timeframe in its original proposal submission.

Detailed discussions on each of these four issues follow a brief background of the ATMS project and RFP No. 01058.

BRIEF BACKGROUND

DTPW first initiated the ATMS project in 2015 when it alerted national traffic controller manufacturers of the County's intentions to upgrade its traffic controllers and transition to the new standard of controllers—the Model 2070LX. This new type of traffic controller is based on a Caltrans² open-source, open-platform design specification. It is an environmentally-hardened computer platform (i.e., the hardware) that can run all of the latest innovations in adaptive and priority signalization technology (i.e., the software).³

² California Department of Transportation

³ A goal of the Caltrans initiative, beyond the primary objective of developing standard specifications for an environmentally-hardened traffic controller, is to give jurisdictions the flexibility of selecting traffic management software independently of the manufacturer of the traffic controller device. Despite this stated goal of Caltrans, multiple sources have advised the OIG of the advantage of purchasing the hardware and

In June 2016, the County awarded, via bid waiver, a \$239,329 contract to Econolite Control Products, Inc. (Econolite) for a pilot project involving 10 intersections on NW 36th Street.⁴ By the end of the year, DTPW was in discussions with Econolite to install an additional 300 controllers and 675 video detection cameras on 10 of the County's most congested corridors. Those negotiations resulted in another proposed bid waiver contract, BW9872-1/20, valued at \$11,852,000. At that time, the OIG became involved in reviewing the proposed bid waiver and we issued a memorandum that resulted in several improvements to the proposed bid waiver award, including a reduction to the overall cost.⁵

DTPW's experience with implementing this relatively small ATMS effort, covering 10 traffic corridors and 300 intersections, was a learning experience. DTPW learned that the implementation effort was more engineering intensive than originally anticipated. (Econolite had to add extra engineering resources towards the project.) Looking ahead towards a Countywide implementation, DTPW realized that any large-scale ATMS implementation would require a sophisticated, complex contract requiring significant engineering and construction efforts, in addition to selecting the actual equipment manufacturer and its associated software/firmware functionalities. In lieu of separately engaging professional engineering services, contracting with a general contractor for the construction, and separately procuring the controllers and associated hardware and software, DTPW opted for an all-inclusive approach.

This new contract would require the winning respondent to individually engineer optimal traffic control settings, including adaptive traffic controls on major traffic corridors, and install its supplied equipment on approximately 2,900 intersections.⁶ The respondent would have to prepare documentation of those settings and install equipment at each intersection. This respondent would also be responsible for installing new central traffic control system software, as well as provide all the hardware, e.g., local traffic controllers, video detection cameras, and all other traffic control equipment. Importantly, DTPW had to develop and incorporate monitoring procedures and performance measures into the contract.

In early 2018, DTPW and Internal Services Department (ISD) staff met to discuss what to include in the prospective procurement solicitations and how best to structure the contract's terms and conditions. Various procurement efforts were started/stopped, including RFI 00887 in April 2018 and RFP 00774 in July 2018.

software from a single business entity. By purchasing the traffic controller and the traffic management software from the same firm, it eliminates the potential for vendor conflicts (finger-pointing) in the event the integrated hardware-software system yields poor performance.

⁴ Horsepower worked on the project as a subcontractor.

⁵ <http://www.miamidadeig.org/Reports2017/TrafficControlModernizationServicesBidWaiver06.12.17.pdf>

⁶ Even though 300 intersections were completed under the bid waiver contract, those corridors would have to be integrated into the new central software implemented countywide. Should the winning respondent be utilizing a different brand of equipment, the previously installed equipment could still be used because the Model 2070LX was premised on it being an open-source, open-platform design specification.

At one time, there were discussions about splitting the County into two zones, each with a separate contract award. There were also discussions about the chosen contracting method as a “goods and services” contract, as opposed to using a design/build contract or some other contracting method. County representatives also discussed what would be the optimal teaming relationships by a respondent, i.e., would the traffic controller manufacturer/supplier be identified as the “prime” or would an engineering firm or even a general contractor respond to the RFP as the “prime.” In the end, the County determined that they would leave that up to the respondents and they were free to determine which team member would be identified as the prime, or whether they would form a joint venture.

Eventually, the ISD/DTPW representatives settled on a contract form and scope of work and issued the subject RFP No. 01058 in October 2018. The OIG notes that the County Administration had set a very aggressive timetable for developing and awarding the ATMS contract and that this was a priority procurement for the departments.

This solicitation started October 4, 2018 and ended November 1, 2018. In response to the County’s solicitation, four entities submitted proposals, each with its own central system software and local traffic controller.

- (1) AT&T (Intelight controllers)
- (2) Horsepower Electric, Inc. (Econolite controllers)
- (3) TransCore ITS, LLC (McCain controllers)
- (4) Siemens Mobility, Inc. (Siemens controllers)

A five-member Competitive Selection Committee (CSC) was appointed to evaluate the proposals. The CSC membership included one individual each from DTPW, the Aviation Department, the Water and Sewer Department, the Information Technology Department, and the State of Florida Department of Transportation.

During these procurement activities, the OIG attended several pre-solicitation meetings and conference calls; pre-bid meetings, including a site visit to DTPW’s Traffic, Signals, and Signs (TSS) location; the CSC’s Evaluation Kick-off Meeting; and its two subsequent Evaluation Meetings (the second of which included oral presentations). After the selection process was completed, the OIG attended twelve internal negotiation strategy meetings beginning in March 2019, and nine negotiation meetings with Siemens beginning in April 2019, the last of which was held on January 29, 2020, after the Mayor rescinded his initial Recommendation to Award and directed renegotiations with Siemens.

The present Recommendation to Award Contract RFP No. 01058 to Siemens is scheduled to be heard by the BCC’s Infrastructure and Capital Improvements Committee⁷ on Tuesday, March 10, 2020.

⁷ Previous ATMS items were heard by the BCC’s Transportation Committee.

OIG OBSERVATIONS

- 1. Both Siemens and Horsepower were evaluated favorably. While, Horsepower bested Siemens in the second evaluation round based on their combined technical scores, three out of five CSC members scored Siemens higher than Horsepower.**

As it turned out, the subject RFP was for a hybrid contract that encompassed engineering design and testing services, furnishing and installing large volumes of equipment, and various ancillary construction services needed at each intersection. Selection of professional engineering consultants, pursuant to Florida Statutes, is based entirely on a respondent's technical and professional qualifications. Price is not an evaluative criterion; instead, it is an amount negotiated subsequent to selecting the consultant. On the other hand, construction services are procured based on lowest bid price. For the ATMS procurement, even though project estimates pegged the construction value of the contract at more than 50% of the overall project cost, price accounted for 20% of the selection criteria. As recognized from the earlier 10-corridor effort, this countywide implementation effort would require complex engineering. Technical criteria, including project approach and firm experience, accounted for 80% of the selection.

The fact is that Siemens and Horsepower were virtually tied based on the technical scoring. Less than 1% separated the two firms in round 1, and less than 3% separated the two firms in round 2 prior to price scoring. However, even though Horsepower was ahead of Siemens by 104 points (prior to price points being added to the total), three of the five CSC members at Evaluation Meeting 2 scored Siemens higher than Horsepower.⁸

The CSC held its first evaluation meeting on January 30, 2019. As depicted below, each CSC member could award up to 800 points spread out over six categories (A – F). The cumulative results by Selection Criteria (Table 1A), and the individual results by CSC member (Table 1B) are on the next page. The two tables are based on the same totals for each firm, they just depict two different ways to look at the scoring. The highest scores for each criterion are highlighted in Table 1A and the highest scores for each CSC member are highlighted in Table 1B.

⁸ Although price proposals had been opened and that information was made available to CSC members, it was not part of the technical scoring awarded by CSC members. Price was an independent evaluation criterion that was later added to the CSC members' scores.

Table 1A – Evaluation Meeting #1 Scoring by Selection Criteria

Selection Criteria	Selection Criteria Description	Max Points Per Person Max Points Total	Horsepower	Siemens	TransCore	AT&T
A	Project Plan/ Technical Approach	<u>200</u> 1000	872	870	878	810
B	Approach to Preparing the System Architecture Design Document	<u>200</u> 1000	880	887	870	786
C	Presentation of Innovative Concepts	<u>150</u> 750	667	688	673	636
D	Proposer's Corporate Experience and Past Performance	<u>150</u> 750	695	702	680	629
E	Proposer's Staff Experience and Past Performance	<u>50</u> 250	206	212	207	183
F	Project Schedule	<u>50</u> 250	230	215	230	190
Total Points Available 4000			3550	3574	3538	3234

Table 1B – Evaluation Meeting #1 Scoring by CSC Member

Selection Criteria	Selection Criteria Description	Max Points Per Person	CSC Member	Horsepower	Siemens	TransCore	AT&T
Total Technical Points Per CSC Member		800	AC	670	720	615	595
			DF	755	747	726	635
			MJ	645	730	680	585
			OM	755	610	785	698
			RP	725	767	732	721
Total Points Available 4000				3550	3574	3538	3234

With regards to the first evaluation, we observe that:

- Siemens had the highest combined scores for four out of the six technical Selection Criteria B, C, D, and E; TransCore had the highest score for Criterion A; and TransCore and Siemens tied for Criterion F (Table 1A).
- Three of the five CSC members scored Siemens the highest; one member scored Horsepower the highest; and one member scored TransCore the highest (Table 1B).
- After Evaluation Meeting #1, only 24 points separated the higher-ranked Siemens from Horsepower (3574 – 3550). This is a less than 1% variance between the two firms (Table 1B).

Oral presentations occurred on February 19, 2019, which were followed later that day by the CSC's second evaluation and ranking. As is typical of the process, the round 1 scores were discarded, and the CSC members were directed to re-score each proposal based on the same six criteria and same point ranges as before (categories A – F). This second round of scoring came after the oral presentations but prior to the determination of price points—even though each respondent's price submission were well known to the CSC members. Tables 2A and 2B show the cumulative results by Selection Criteria, and the individual results by CSC member (same presentation and layout as depicted in Tables 1A and 1B.) Table 2C shows the final results after the 20% factor of price is included.⁹

Table 2A – Evaluation Meeting #2 Scoring by Selection Criteria

Selection Criteria	Selection Criteria Description	Max Points Per Person Max Points Total	Horsepower	Siemens	TransCore
A	Project Plan/ Technical Approach	$\frac{200}{1000}$	908	855	886
B	Approach to Preparing the System Architecture Design Document	$\frac{200}{1000}$	899	875	874
C	Presentation of Innovative Concepts	$\frac{150}{750}$	666	693	670
D	Proposer's Corporate Experience and Past Performance	$\frac{150}{750}$	710	703	680
E	Proposer's Staff Experience and Past Performance	$\frac{50}{250}$	236	218	207
F	Project Schedule	$\frac{50}{250}$	230	201	222
Total Technical Points Available 4000			3649	3545	3539

Table 2B – Evaluation Meeting #2 Scoring by CSC Member

Selection Criteria	Selection Criteria Description	Max Points Per Person	CSC Member	Horsepower	Siemens	TransCore
Total Technical Points		800	AC	680	685	645
			DF	763	730	710
			MJ	685	730	675
			OM	795	620	785
			RP	726	780	724
Total Technical Points Available 4000				3649	3545	3539

⁹ Price "evaluation" or scoring is nothing more than the application of an RFP-stated formula, i.e., the lowest price proposal would receive the maximum 1000 points. The remaining proposals are assigned a proportionate score, based on a ratio derived using their prices relative to the lowest price.

Table 2C – Final Scores with Price Included

Selection Criteria	Selection Criteria Description	Max Points Total	Horsepower	Siemens	TransCore
	Proposal Prices		\$238,609,191	\$152,221,050	\$260,419,338
G	Proposal Price Scoring	1000	638	1000	585
	Technical Scores	4000	3649	3545	3539
Total Points		5000	4287	4545	4124

With regards to the second evaluation, we observe that:

- Horsepower had the highest combined scores for five out the six technical Selection Criteria (A, B, D, E, and F); Siemens had the highest score for Criterion C (Table 2A)
- Three of the five CSC members scored Siemens the highest; two members scored Horsepower the highest (Table 1B)
- Only one CSC member gave the highest technical score to the Horsepower proposal in both rounds of evaluations (Tables 1B and 2B)
- Prior to price consideration, Horsepower was ahead of Siemens by 104 out of 4000 points—a difference of 2.6%.
- Siemens price score bested Horsepower’s price score by 362 points (1000 – 638), which reflected that its proposal price was about \$86.4 million less than Horsepower’s proposal price.
- Because of Horsepower’s narrow margin after the Technical evaluation was only 2.6%, even if Siemens’ proposal was \$60 million more expensive, Siemens still would have scored higher overall.

Even though price was a factor, this procurement was still driven primarily by the technical evaluation of the firms and their proposals. As shown through these tables, both Siemens and Horsepower were evaluated favorably—these two proposals were otherwise closely matched, as indicated by their respective technical scores. In the second round of scoring, while Horsepower garnered more technical points than Siemens, the majority of the CSC members ranked Siemens over Horsepower.

The OIG finds that the CSC evaluated the proposals in a fair and objective manner consistent with the criteria provided in the RFP. The OIG also notes that representatives from both vendors were present at the final evaluation meeting when the scores were announced.

2. The County's price negotiations with Siemens were extensive and eventually allowed only marginal variation from the original price proposal.

As mentioned earlier, there were nine negotiation meetings with Siemens beginning in April 2019, the last of which was held on January 29, 2020.¹⁰ Between meetings, there were numerous document exchanges between County and Siemens representatives containing the most recent versions of the RFP and its attachments, and then among the various County participants. There were also many telephone conversations between parties to discuss issues and proposed changes to contract terms and conditions, including those between ISD and Siemens, or ISD and DTPW or the CAO or both. This was all part of a dynamic environment involving back-and-forth conversations and document exchanges between the parties to obtain a final agreement.

In June 2019, after about two months of negotiations, the County, as a gauge to the negotiation's progress, requested that Siemens provide revised prices, based upon County comments to its proposal and the discussions that had taken place. Siemens' response addressed six issues and included \$22,753,750 of additional costs. The County responded back to Siemens and challenged many of its contentions and requests for additional funds. Through further negotiations, the following pricing additions and enhancements were agreed to: two expedited software customizations requested by the County totaling \$200,000; additional training requested by the County totaling \$440,000; and adding a dedicated allowance totaling \$4,647,250 for County-requested night work. These additions added \$5,287,250 to the overall contract price.

¹⁰ An issue about Siemens' "low-ball" price was raised by Horsepower's representative during a BCC discussion item on February 4, 2020. During Horsepower's presentation, its representative played excerpts of an audio recording of a Negotiations Team meeting, specifically the strategy portion of a meeting held on May 8, 2019, when County representatives were talking among themselves—the Siemens negotiating team had already gotten off the phone (teleconference). In those excerpts, the ISD Negotiating Team Chairperson could be heard cautioning the Team about underpriced offers, i.e., "low-ball" bids where the work effort was not at the level desired. The caution voiced by the ISD staff member is that low-ball bids puts the County at-risk for change orders. These audio excerpts played during Horsepower's presentation were forceful cautionary comments, and on their own could be compelling; however, as often is the case with excerpts the full context was not provided.

An OIG representative was present during that May 8 meeting, as we were with all the other negotiations meeting where pricing assumptions were discussed. The OIG has also since listened to the audio recording of the May 8 discussion and determined the context in which those statements, about the low-ball bid, were discussed. The context involved the starting point for negotiations and the challenge to ensure that all pricing assumptions be disclosed. It would then be up to the Negotiations Team to ensure that the level of performance expected by the County would be performed by the vendor and, as necessary, determine if there were additional costs associated with that effort. The ISD representative was cautioning the group to not merely take the low-ball bid without going through these due diligence efforts. The ISD representatives also reminded the group (that included two prior CSC voting members) that Siemens' low price was well known to the CSC members when they scored the proposals. The ISD representative laid out two choices—bring the lower-priced proposal up to the level of effort desired or get the other extremely, high priced offers "back down to earth, out of orbit from where they were." These other price proposals were characterized as "out of the ballpark" as they exceeded the County's estimate by upwards of \$66 million. Siemens price was under the County's estimate by \$20 million. Again, it is worth noting that because the technical scores between Siemens and Horsepower were very close, Siemens' price proposal could have been \$60 million more than it offered, and Siemens would still have come out as the first ranked proposer.

CAO guidance to ISD and to the Negotiation Committee members during these concluding sessions and internal strategy meetings was key to making final determinations on what were allowable, discretionary decision-making options. Notably, what modifications to the RFP terms and/or to the Siemens original proposal, and accompanying prices, could Committee members accept, while maintaining the competitive nature of the procurement.

3. There is no such thing as a “no change order” guarantee

During a discussion item on the BCC’s February 4, 2020 agenda concerning the status of the subject ATMS RFP 01058, Horsepower’s representative made the statement—that Horsepower’s higher project price tag came with a guarantee that there would be no change orders.

. . . let me just say this, it is true that my client’s bid was higher than Siemens, but unlike the Siemens proposal, number one, it was realistic, and two, it included a no change order guarantee . . .

Such a guarantee is found nowhere in Horsepower’s proposal or in its supplemental written submission. Moreover, the statements made by Horsepower’s principal during the oral presentation was limited to work already identified in the RFP, i.e. “there will be no change orders for identified work in the RFP.” A change order, however, is for work that is not identified in the contract. To guarantee not requesting change orders for work already covered by the contract, is not the same as guaranteeing no change orders.

Further, such an offer—guaranteeing no change orders—may have been viewed as materially altering the terms of the contracting arrangement by morphing it into a Guaranteed Maximum Price (GMP) Agreement. Clearly this would have been a different type of price submission than what was proffered by the other proposers to the RFP. This belated contention that Horsepower’s proposal contained such a guarantee was made to justify why Horsepower’s price was 57% higher than Siemens.

But even with a GMP Agreement, change orders can happen—they can be requested by the Contractor and where legitimate grounds exist, they will be approved by the County.¹¹ There could even be change orders, without a price tag, merely to extend time. Similarly, design/build contracts, where there is a coordinated effort between the architect/engineer and the construction contractor, are also not immune to change orders. Given the type of work involved for this project—especially unknown conditions at over 2000 intersections yet to be surveyed—a guarantee of this kind is just not realistic.

¹¹ Recall the County’s contract for the Performing Arts Center, which was a Construction Management At-risk Agreement with a Guaranteed Maximum Price. The build-up of potential change orders and change order requests contributed to this contract’s complete restructuring half-way through the Center’s completion.

4. Both respondents relied upon a shorter timeframe for DTPW’s review. Siemens first introduced its request during negotiations, while Horsepower included a shorter timeframe in its original proposal submission.

Upon review, it appears that Horsepower’s original project schedule suffered from the same defect that was the ultimate flaw, per the Hearing Examiner’s findings, that afflicted the later agreed-upon Siemens project schedule. At issue here is the allowable timeframe for DTPW to review the plans submittals. Submittals contain information, such as design calculations, specifications, intersection survey and inspection results, and other supporting documents to allow for a proper evaluation of the proposed action contemplated by vendor.¹² These plan submittals by the vendor to the department—and the turn-around time for review—are key determinants to the overall project’s schedule, which can affect the overall cost of the project.

The RFP’s *Scope of Work* [§2.07(E)(4)] states that 21-calendar days should be the default value allowed by the respondent to account for the County’s review and approval of its submittals. The OIG observed that the Siemens project schedule attached to its proposal reflected this County requirement.¹³ The Siemens proposal also notably offered that it would complete Task Group 1 work elements (installing the central system software, local controller software, and all of the intersection traffic control devices) in four years, not five.

The County’s first knowledge of Siemens seeking to shorten the 21 calendar-day review time was on or about March 19, 2019, when the County received from Siemens its “red-line” version of the proposed contract. The County, as a standard practice, had earlier forwarded to Siemens a draft contract and attachments, including Appendix A *Scope of Work*, which included the above-noted section and 21-day review time. In response, Siemens sent back a proposed revision altering the number of days. Siemens reworded the clause from “shall allow for minimum twenty-one (21) calendar day ... review time ...” to “shall allow for a maximum of 10 (ten) calendar day ... review time...”

During negotiations, Siemens’ initially proposed four-year completion schedule was accompanied by a proposed 10-day review period. However, at the onset, the County could not promise that it would have the necessary resources to support Siemens’ efforts. In June 2019, Siemens submitted a price change totaling \$4,496,000, should it be agreed that a five-year schedule was the only acceptable schedule. In July 2019, Siemens reiterated its desire to re-discuss a four-year schedule with the County and, again, emphasized the need for the County to provide the necessary resources to support

¹² The overall scope of work for the ATMS project is broken into three tasks groups. Task Group 1 *ATMS and Traffic Signal Controller Migration*; Task Group 2 *Full Actualization of Signalized Intersections*; and Task Group 3 *Miscellaneous Engineering Implementation*. Performance specifications for each Task Group requires the respondent, at one time or another during its performance, to provide the County with “submittals.”

¹³ Siemens’ schedule displays a complete Work Breakdown Structure, one part of which is labeled *Task Group 1 – Review, Item 94 - Review & Approval (MDC TSS Division)*, which shows a task duration of 15 working days, i.e., 21 calendar days. Other Siemens schedule items for Task Group 2 and Task Group 3, with the same notation, *Review & Approval (MDC TSS Division)*, also show a similar duration.

Siemens' efforts. Ultimately, the County agreed to provide the necessary resources and to accept the 10-day review time.¹⁴

As this issue relates to Horsepower's proposal, we note that, although the wording varies, Horsepower's project schedule, which it submitted with its proposal, dated November 1, 2018, appears noncompliant. Said schedule displays for *Task 1 – ATMS, Schedule Implementation Plan, ID 33 - MDC Review*, a task duration of 12 calendar days; and displays for *Task 1 - Schedule Typical Controller Migration Package #1 (60 intersections), ID 121 - Review by MDC*, a task duration of 7 calendar days; both of which are less than the RFP required 21-calendar day duration. Horsepower's proposed shortened durations were not addressed during Horsepower's oral presentation or during its proposal evaluation.¹⁵

Horsepower's original project schedule suffered from the same defect that was the ultimate flaw, per the Hearing Examiner's findings, that afflicted the later agreed-upon Siemens project schedule. Horsepower's review-period deviation was disclosed upfront, at the time of proposal submission, albeit buried in the proposal's attached schedules. On the other hand, the Siemens' defect arose at the start of negotiations when the red-line contract was returned. The defect gained more traction when the County yielded to the shortened review period during negotiations. Because the modification occurred during negotiations—and not with the original proposal submission—the County Attorney's Office advised the Administration that rescinding the original Recommendation to Award and renegotiating this point was legally permissible.

CONCLUSION

The subject Recommendation to Award RFP No. 01058 to Siemens is based on a subsequent negotiation that addresses the defect found by the Hearing Examiner. The resulting proposed contract adheres to the 21-calendar day review duration afforded to DTPW. The subsequent negotiation did not result in a higher contract price from that reported in the first Recommendation to Award. As earlier stated, the OIG finds that this Recommendation to Award is a best effort endeavor by the County to obtain a fair, reasonable, workable, and affordable agreement.

We note that a related procurement for engineering consultant services is on hold pending the award of the subject contract.¹⁶ This is because one of the engineering firms responding to this procurement is a sub-consultant to Horsepower and the engineering agreement has an eligibility pre-condition that precludes a respondent from proposing or

¹⁴ The parties agreed to 10 working days.

¹⁵ Notwithstanding that the subject issue was not specifically discussed at oral presentations or during the evaluation meetings, the OIG notes that the proposer's Project Schedule was an evaluative criterion (Selection Category F). With respect to the second evaluation, Horsepower scored 230 out of 250 available points for Project Schedule, whereas Siemens scored 201 out of 250 (see earlier Table 2A).

¹⁶ Notice to Professional Consultants (NTPC), General Engineering Consultant Services for Department of Transportation and Public Works (DTPW), Traffic Signal Operations DTPW Project No. 2190029, ISD Project No. E19-DTPW-01

being considered for award, if said respondent has been selected, as a prime or subconsultant, pursuant to RFP 01058.

The OIG mentions this engineering consultant agreement because it will be an important engagement supporting DTPW's ATMS efforts. The successful respondent will replace two DTPW consultants that are currently providing similar services. Awarding both RFP No. 01058 and this separate engineering consultant agreement are necessary to achieving shortened travel times along our roadways.

* * * * *

The OIG appreciates and thanks the staffs of the Internal Services Department and the Department of Transportation and Public Works for the courtesies and cooperation extended to the OIG during the course of the procurement process.

cc: Abigail Price-Williams, County Attorney
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