



Richmond City Council

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OFFICE OF THE CITY AUDITOR

REPORT # 2011-15

AUDIT

Of the

Richmond City Department of Procurement

**Review of the Justice Center Construction
Contract Procurement**

July 2011

OFFICIAL GOVERNMENT REPORT

Richmond City Council

OFFICE OF THE CITY AUDITOR

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SUMMARY REPORT

Review of Justice Center Construction Contract Procurement

Introduction

At the request of four City Council members and consent by the City Council President, the City Auditor’s Office has completed a limited review of the procurement processes and procedures followed in the proposed Justice Center construction contract. The objective of the review was to advise Council if the procurement was conducted in accordance with State and City Codes and the City’s policies, procedures and practices. The review was conducted in accordance with Generally Accepted Government Auditing Standards.

This procurement was conducted in accordance with the Public Private Education Facilities and Infrastructure Act of 2002 (PPEA). **Attachment C** to the report includes background information related to the procurement method followed.

Attachment B to the report provides a detailed timeline of the events during the process.

Overall Opinion:

The City complied with almost all of the numerous requirements of Chapter 74 of the City Code applicable to this procurement. Please review **Attachment A** to this report for various requirements where the City

complied with laws, policies and procedures.

Exceptions Noted:

Requirement:

The City Code section 74-405 (a) (1) d requires that the proposer “provide current or most recently audited financial statement of the firm and each partner with an equity interest of 20 percent or greater.”

Findings:

1. Auditors found that one of the proposers did not provide audited financial statements as required. Yet, the proposer was allowed to participate further in the process.

During the review, auditors interpreted the above provision to require current audited financial statements or most recently audited financial statements.

Auditors learned that the City Attorney’s Office interprets the above provision to read as “current financial statement (audited or unaudited) or most recently audited financial statement.” Audited financial statements provide independent assurance of the accuracy and reliability of the reported information, which unaudited financial statements would lack.

Providing a choice between submitting unaudited or audited financial statements is not logical or prudent, which does not appear to have been the intent of the City Council when they adopted this provision. Since this issue is open for interpretation, an independent legal opinion should be sought. In addition, relying on the

proposer's financial viability for a major project based on unreliable information does not appear to be in the City's best interest.

2. The top ranked proposer is a joint venture between two companies. The City received audited financial statements from one of the partners in the joint venture and the financial statements from the parent company of the second partner. The following concerns were identified:
 - a. The City did not confirm the exact relationship between the parent company and its subsidiary using any formal documentation from the parent or the subsidiary.
 - b. The City does not have knowledge if the subsidiary is financially viable or has the financial ability to complete the job.
 - c. There is no documentation indicating that the parent company assumes liability if the subsidiary company defaults.

Requiring the parent company to assume the subsidiary's liability in case of a default would mitigate the above risk. In addition, the City will require a surety bond from the selected vendor to guarantee performance.

Requirement:

The City Code section 74-407(a)(6) mandates the City to consider the proposer's financial condition as one of the criteria to evaluate the qualification of each proposer.

Finding:

Auditors did not find any evidence of a formal evaluation of the financial conditions of any of the proposers.

Requirements:

1. City Code section 74-71 requires negotiation with two or more fully qualified proposers that are deemed best suited. This section allows discretion to the Procurement Director to negotiate with and award to only one proposer provided the proposer is:
 - o The only fully qualified proposer or
 - o The proposer is "clearly more highly qualified" than others under consideration
2. Section 74-407 requires, "The City **shall** consider the following factors in determining whether the proposer possesses the requisite *qualifications* and experience:
 - (1) Experience with similar infrastructure projects
 - (2) Demonstration of ability to perform work
 - (3) Leadership structure
 - (4) Project manager's experience
 - (5) Management approach
 - (6) Financial condition
 - (7) Project ownership"

Finding:

In the current situation, there were several fully qualified proposers. The Procurement Director used her discretion to negotiate with only one proposer. She documented the reasons for doing so as the top ranked proposer to be "clearly more qualified" rather than "clearly more highly qualified."

During discussions, the City Attorney’s Office interpreted the term “clearly more highly qualified” as one proposer having dramatically superior qualifications over the other proposers in the Procurement Director’s discretion.

The Procurement Director relied heavily on the ratings provided by the evaluation committee. An analysis of the ratings revealed the following differences between the top two proposers:

	City Auditor's Method	City Administration's Suggested Method
Technical Design	3.1%	22%
Value Added Enhancements Construction	0.6%	6%
Expertise Lifecycle Cost Analysis	-0.6%	-5%
Acceptable Safety Record	2.8%	35%
Schedule	-0.9%	-8%
Price	0.4%	7%
MBE/ESB participation	5.4%	86%
Total Difference	1.4%	4%
	12.2%	147%

Note: the negative numbers indicate that the second highest ranked proposer has higher points than top ranked proposer.

The above ratings were calculated by the City Auditor using overall scores for each of the top two ranked proposers. This methodology allocates the total overall difference to each line item. The City Administration’s method compared each line item scores separately to calculate the difference per line item. However, this method exaggerates the difference between the overall scores and, therefore, is not desirable.

The evaluation criteria for ratings did not include several of the factors mandated in City Code section 74-407 to determine qualification of the proposers.

Based on the above provisions related to the proposer’s qualification and the analysis of the evaluation points presented above, it is not clear if the proposer who received the highest rating was “clearly more highly qualified.” Therefore, it is not clear if the City should have negotiated with only one proposer.

There appears to be a need for an independent legal opinion from an attorney knowledgeable about PPEA regulations to confirm or refute the Procurement Director’s action. The legal opinion must clarify if the City is required to negotiate with more than one proposer. Otherwise, the City can proceed with awarding the contract without further negotiation.

The City Auditor’s Office appreciates the cooperation by the City staff. Please contact Umesh Dalal if you have any questions about this report.



Umesh Dalal, CPA, CIA, CIG
City Auditor

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Attachment A

As part of the review of the procurement process for the jail expansion, the City Auditor’s Office reviewed the proposal responses and tested for compliance with below PPEA requirements as outlined in Chapter 74 Article IX of the City Code. Proposal responses were also reviewed to ensure that the RFP scope of services and evaluation criteria were addressed.

PPEA Requirement	Compliance Met?
Proposal review fee was assessed	Yes
Public notice of receipt of unsolicited proposal was posted for at least 45 days	Yes
Posting contained the required language	Yes
Conceptual phase proposals contained the required PPEA requirements:	
• Project Characteristics	Yes
• Project Financing	Yes
• Project Benefit and Compatibility	Yes
Detailed phase proposals contained the required PPEA requirements (11 requirements):	Yes
Detailed phase proposals contained RFP scope of work	Yes
PPEA and RFP evaluation criteria were considered during evaluation process	
• Project Characteristics	Yes
• Project Financing	Yes
• Project Benefit and Compatibility	Yes
• Technical Design	Yes
• Value-Added Enhancements	Yes
• Construction Expertise	Yes
• Lifecycle Cost Analysis	Yes
• Acceptable Safety Record	Yes
• Schedule	Yes
• Price	Yes
• MBE/ESB Participation	Yes

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Attachment B

February 2009 - A Community Based Corrections Plan

According to the Community Based Corrections Plan:

- Nearly all areas of the existing jail are congested. It has insufficient space for the number of incarcerated inmates to meet current program and operational standards of the Board of Corrections.
- Average daily population exceeds the design capacity. The Jail's current operating capacity is 882, however, consistently housed a population of 1,500 inmates over the past eight years.
- Also the Jail facility is inadequate for future incarceration projections.
- Estimated inmate population in July 2022 - 2,023(*without pre-trial or non-incarceration alternative programs*) 1,923 to be housed in city jail and 100 housed in regional jail in Caroline County, VA

February 2009 - Planning Study for Richmond City Jail

This plan laid out the requirements for the City Jail.

June 2009 – Revision of the Planning Study

The above plan was revised and the Architectural firm dropped the bed requirement from 1,923 to 1,032. They recommended a provision for capacity expansion up to 1,548 beds.

February 2010 – Proposals from Architectural Firms for Detailed Jail Design

The City requested these proposals to initiate the jail construction project using traditional design-build process.

February 2010 – Receipt of unsolicited proposal

The proposal was in accordance with the Public Private Education Facilities and Infrastructure Act of 2002 (PPEA).

February 2010 – Decision to move forward with PPEA procedures

A City committee made the above decision.

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March 2010 – Legally required advertisement

The City advertised to receive competing proposals in accordance with PPEA procedures.

May 2010 – Competing proposals received

The City received five competing proposals. Two of the proposals were rejected as non-responsive.

June through July 2010 – Evaluation committee recommendation

Evaluation committee completes the review and majority of members recommended accepting three competing proposals and the original unsolicited proposal for detailed phase of PPEA process keeping the jail at its current location.

September 2010 – Community Input

Community meeting held to answer questions and introduce qualified proposers.

December 2010 – Decision on use of competitive negotiation process

The Director of Procurement uses her discretion to use competitive negotiation process rather than sealed bidding process to provide the City greatest flexibility. The sealed bidding process would require the City to award the contract to the lowest bidder without any opportunity for further negotiation.

March 2011 – Detailed proposals received

The City received four responses.

April 2011 – Review of the detailed proposals

Evaluation committee completes their review. Upon their recommendation, the Director of Procurement Services uses her discretion to negotiate with only one vendor.

May 2011 through June 2011 – Negotiation with top ranked proposer

The City completes the negotiations and agrees on final price of \$116.5 million.

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June 2011 – City administration approval

The City administration approves submitting recommendation to award contract/comprehensive agreement to the top ranked proposer. The City posts intent to award as required by the City Codes. The City Council’s approval to the Contract as required by VA code section 56-575.16(5) is sought.

July 2011 – City Council request to the City Auditor

The City Auditor was requested to advise the City Council if the procurement was conducted in accordance with State and City Codes and the City’s policies and procedures and practices.

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Background

Attachment C

Request for proposal through the traditional procurement process

In December 2009, Procurement Services issued a Request for Proposal (RFP) for architectural and professional engineering services to create a design for the Richmond City Jail Improvement Project. The primary components of the RFP included:

- Construct new mid-rise tower for 572 beds;
- Completely renovate for continued utilization four low-rise dormitory type housing units totaling 460 beds in the existing jail;
- Build new overall core infrastructure for the jail facility; and
- Demolish and remove the unused remainder of the existing jail facility for parking area.

Procurement Services received numerous proposals in response to the RFP as well as an unsolicited proposal in accordance with the Public Private Education Facilities and Infrastructure Act of 2002 (PPEA). The Evaluation Committee reviewed the unsolicited proposal and recommended moving forward with the Conceptual phase of the PPEA process. Therefore, Procurement Services cancelled the RFP and returned the unopened proposals.

What is PPEA?

The Virginia General Assembly enacted the PPEA to provide an alternate procurement method to departments, agencies and institutions of the Commonwealth of Virginia as well as local governments by granting responsible public entities authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine there is a need for such projects and that private involvement may provide the project in a more timely or cost-effective fashion (Code of Virginia Title 56 Chapter 22.1). The Act was implemented in Richmond by the City of Richmond's City Code under Chapter 74, Article IX (Public-Private Partnerships).

Qualifying projects include but are not limited to:

- any education facility;
- any building or facility for principal use by any public entity;
- recreation facilities,
- technology infrastructure, or
- any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity.

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Background

Attachment C

Proposals may be either solicited by the City or submitted to the City by a private entity on an unsolicited basis. In general, proposals should provide a concise description of the proposer's capabilities to complete the project and the benefits to be derived from the project by the City. Proposals should include a comprehensive scope of work and a financial plan for the project that contains enough information to allow an analysis by the City of the financial feasibility of the proposed project.

The PPEA requires proposers to follow a two-part proposal submission process consisting of:

- **Conceptual Phase**
During the conceptual phase proposals contain specified information on proposer qualifications and experience, project characteristics, project financing; and project benefit and compatibility.

- **Detailed Phase**
During the detailed phase proposals contain specified deliverables including, but not limited to:
 - topographical map;
 - list of public utility facilities, if any that will be qualifying the project;
 - total life-cycle cost specifying methodology and assumptions of the project;
 - identification of any known government support or opposition;
 - identification of any known conflicts of interest affecting the City's consideration of the proposal; and
 - any additional material and information that the City may reasonably request.

Number of submittals

In March 2010, during the Conceptual phase, Procurement Services advertised for competing unsolicited PPEA proposals. In addition to the unsolicited proposal, the City received five more proposals. However, two of the vendors were deemed not to have met all of the PPEA requirements. One vendor failed to describe how it would perform additional property acquisition, construction and other services. Furthermore, neither vendor paid the proposal fee of \$50,000. The two vendors were informed in writing that their proposals would not be considered. The committee completed the Conceptual phase evaluation process and recommended moving forward to the Detailed phase.

In December 2010, the Procurement Services Director accepted the Committee's recommendation and decided to move with the competitive negotiations. Procurement Services

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Attachment C

received four proposals during the Detailed phase. The evaluation committee reviewed those proposals and ranked them accordingly. The Procurement Director selected the top ranked vendor and issued an intent to award.