



Robert E. Antonacci II, CPA
Comptroller

COUNTY OF ONONDAGA

Office of the
County Comptroller

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January 20, 2012

The Honorable County Executive
The Chair of the County Legislature
The Chair of the Ways and Means Committee
The Deputy County Executive
The Chief Fiscal Officer
The Director of Community Development
The Clerk of the County Legislature

We have audited Request for Proposals (RFP) internal controls of the Community Development Department. Internal Audit tested RFP #10-3520-001, EPA Certified Lead Based Paint Inspection and Testing Services awarded April 1, 2010 and have issued a report thereon. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

In planning and performing the audit, we considered Onondaga County procedures and directives and New York State General Municipal Law § 104-b, in regards to the Request for Proposals process, as a basis for designing our audit procedures. This audit covered the following areas:

- I. Contract History
- II. RFP Procedures
- III. Evaluations

Our consideration of internal controls over the RFP process was designed to identify deficiencies as described in the attached report. It is the responsibility of the department to adhere to the directives and procedures established by the County Executive.

The audit notes the Department did not have clear reasoning as to why this RFP was a professional service. We suggest this RFP could have been awarded by sealed bid.

Our audit did not see an attempt by the either the Division of Purchase or Community Development to negotiate the price down once the vendor was identified.

The audit also highlights the lowest proposal based on 250 inspections could have saved the County \$8,750. The selected vendor's price per inspection was in excess of 10% higher than the lowest bidder. It was noted the contract was awarded for a three-year period.

Audit of RFP of Community Development Department

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This RFP did not go to the RFP Committee because the estimated annual amount of the contract was thought to be \$40,000. County directives state RFPs in excess of \$50,000 go to the RFP Committee. First, in this case there was an error in the price assumption. The proposed budget in the RFP of 250 homes multiplied by the award price of \$280 equals \$70,000 and therefore should have gone to the RFP Committee. Secondly, we suggest the procedure be revised to consider dollar amounts that exceed \$50,000 over the term of the contract be sent to the RFP Committee for review.

The audit also noted the low bidder was a local vendor and the contract awardee is located outside Onondaga County.

Sincerely,

A handwritten signature in black ink, reading "Robert E. Antonacci II CPA". The signature is written in a cursive style with a large, stylized "R" and "A".

Robert E. Antonacci II, CPA

The Office of the Onondaga County Comptroller's Audit Division performed an audit of the Onondaga County Community Development Request for Proposal (RFP) #10-3520-001, EPA Certified Lead Based Paint Inspection and Testing Services awarded April 1, 2010. A vendor questioned the RFP process and the Department's final decision to award the RFP to another vendor, EcoSpect Inc, which had a higher cost (\$280 per house versus Lead Safe's proposal of \$245) and whose business did not reside in Onondaga County.

Background and Audit Methodology

The scope was to determine if proper RFP procedures were followed according to Onondaga County Policy and New York State General Municipal Law § 104-b.

An audit of the returned proposals and recommendations leading to the final decision of RFP #10-3520-001 was also performed.

Overview of the Lead RFP #10-3520-001

Under the Scope of Service, Section 7, of RFP #10-3520-001, EPA Certified Lead Based Paint Inspection and Testing Services, it states, "*Onondaga County Community Development is responsible for the rehabilitation of approximately 250 houses per year through its Housing Rehabilitation Programs. As of March 15, 2001, all rehabilitation work undertaken with Federal Assistance must be completed in compliance with the US Department of Housing and Urban Development's Final Regulation published September 15, 1999 entitled "Requirements for the Notification, Evaluation and Reduction of Lead Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance."* The County's seven housing rehabilitation inspectors are all EPA certified Risk Assessors. Community Development does not own an XRF machine and is not presently planning to perform paint inspections."

According to 24CFR Part 35.110, the definition of "lead paint inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation."

Request for Proposals Lead RFP #10-3520-001 and Responses

On February 25, 2010 the Onondaga County Community Development Division sent 5 vendors a letter and RFP #10-3520-001 seeking a contract to provide EPA Certified Lead Based Paint Inspection and Testing Services. Under the Schedule of Events, Section 1.2 of the RFP, the Proposal submission deadline was March 18, 2010, with an expected award of March 31, 2010 and expected start date of April 1, 2010. We also noted before issuance of the RFP to vendors, it was reviewed and approved by the Division of Purchase and a RFP number was assigned.

Four vendors returned completed RFPs and one declined to participate. Per the pricing sheets provided by the Department, the following prices were quoted:

Lead Safe LLC \$245/per unit inspection

| | |
|-------------------------|---------------------------|
| EcoSpect, Inc. | \$280/per unit inspection |
| Hygeia of NY, Inc. | \$300/per unit inspection |
| Envirologic of NY, Inc. | \$350/per unit inspection |

Recommendation Submitted by Community Development

Community Development's Housing Rehabilitation Supervisor completed an analysis of the RFPs which included recommendations to award the RFP to Ecospect. On March 30, 2010, the Supervisor sent this analysis to the Purchasing Director. The Housing Rehabilitation Supervisor noted the vendors provided all the documentation required in the RFP and stated, *"although the price submitted by EcoSpect was slightly higher than the lowest bid, Community Development would like to award the contract to them. EcoSpect has been performing our paint inspections for almost nine years. In the nine years we have worked with Vendor 2 we have only received positive feedback about the people EcoSpect sends to our client's homes. This is a quality that is difficult to quantify, but an extremely important attribute nonetheless. In addition to this, EcoSpect is also easy to work with, timely, and honors their commitments. Our business relationship with EcoSpect has been extremely successful and we would like to continue it."*

County RFP Award Procedure

According to the Onondaga County Division of Purchase Request for Proposal (RFP) Training Manual March 2010, *"the department will consider factors other than the lowest price when determining whether to make an award"*. Under RFP final template (3/31/10), Evaluation Methodology, Section 8.1 states, *"Contract will be awarded to the vendor who is most responsive and responsible, and not solely on the basis of price"*. NYS General Municipal Law § 104-b indicates the RFP can go to the lowest responsible bidder.

In this particular case using the statistics in the RFP's (250 houses) and the proposal prices received over a 12 month period, Lead Safe was \$8,750 lower than the awardee Ecospect. Over the 3 plus years of the contract Lead Safe will be approximately \$26,250 lower than Ecospect.

It is also our understanding once the Department identifies the vendor the Department has the option to negotiate the price with the bidder in order to get a better deal for the taxpayers of Onondaga County.

Recommendations

It is recommended in the future the department explore the option to negotiate the price with the most responsible bidder to lower the cost to the taxpayer. Especially when the contract awardee was not the lowest bidder.

It is also recommended in cases where the lowest bidder is not chosen the Department and or the Division of Purchase thoroughly document as to the reasons for not selecting the lowest bidder.

Anticipated Contract Amount and Approval

On April 1, 2010, the Purchasing Director reviewed the RFP and questioned the total amount of the contract. The Housing Rehabilitation Supervisor stated, " *the anticipated annual budget for this RFP is \$40,000.* "

County Executive Directive dated June 13, 2008 requires for contracts under \$50,000 the recommendation be addressed to the Director of Purchase and the Director would either approve or reject the recommendation or send it on the RFP Evaluation Committee. If the contract was over \$50,000 responses must be reviewed by an RFP Evaluation Committee.

Since the recommended annual budget from Community Development was under \$50,000 it did not have to go to the RFP Committee, and the Purchasing Director sent an email to the Housing Rehabilitation Supervisor approving the recommendation, complying with County procedure.

However, it appears the Director of Purchase and or Community Development did not do enough due diligence as the RFP stated the County is required to do 250 inspections per annum. At Ecospect's requested price of \$280 per house the cost per annum would be \$70,000 (\$280 per house *250 Houses).

It was noted the original Contract (#20010) amount was \$40,000 and was created April 7, 2010 and was subsequently amended by in October 2010 for an additional \$30,000. It appears this should have gone to the RFP committee for review.

Concerns in regards to Oversight

The contract with EcoSpect was signed for the time period April 1, 2010 –December 31, 2013. The RFP clearly states in Section 6.12 the contract will be for 1 year with 2 possible 1year extensions. Therefore, it appears the contract term did not deviate from County Policy.

However, it is the opinion of the Comptroller's Office vendor/ contract history should also be considered as part of the review to determine if the RFP exceeds \$50,000 and should be referred to the RFP Committee. Ecospect had previously agreed to a contract in 2001 and the contract was subsequently amended thru 2009.

Per discussions with the Director of Purchase the \$50,000 threshold is based on an annual amount and not the total length of the contract.

It is recommended the RFP amount requirement to go to committee be applied to the term of the contract and not based on an annual budgeted amount recommended by the Department where applicable.

As outlined in this RFP if the vendor does testing of 250 houses a year as outlined in the RFP, times the price of \$280 a house it totals approximately \$70,000. Therefore, it is the

finding of the Comptroller's Office this RFP should have gone to the RFP committee in any event.

History of the Prior Contract –39001 from March 19th 2001 to March 31, 2010

We noted prior to the award of contract 20010 (RFP-10-3520-001) to EcoSpect. Ecospect also provided services from March 19, 2001 to March 31, 2010 under contract 39001. The following is noted:

| <u>Type</u> | <u>Date Created</u> | <u>Amount</u> | <u>Time Period</u> | <u>Reason</u> |
|-------------------|---------------------|---------------|--------------------|------------------------|
| Original Contract | 2/4/2003 | \$100,000 | 3/19/01-12/31/2002 | Original Contract |
| Amendment | 1/8/2004 | \$ 25,000 | 12/31/03-12/31/05 | Ext. term & amount |
| Amendment | 3/1/2004 | \$ 900 | 3/1/04-12/31/05 | Training class 4/7/04 |
| Amendment | 5/13/2004 | \$ 293 | 3/1/04-12/31/05 | Add.Cost Train.4/7 |
| Amendment | 11/29/2004 | \$ 50,000 | 11/15/05-12/31/05 | Incr.Inspe/test contr. |
| Amendment | 10/18/2005 | \$ 1,500 | 10/1/05-10/1/06 | Training class 11/3/05 |
| Amendment | 4/4/2006 | \$ 27,815 | 4/1/06-12/31/07 | Ext. term & amount |
| Amendment | 11/29/2006 | \$ 20,000 | 11/1/06-12/31/07 | Inspec.inc.comp.only |
| Amendment | 2/13/2007 | \$ 1,000 | 2/1/07-12/31/07 | Training class 3/07 |
| Amendment | 6/13/2007 | \$ 22,000 | 6/1/07-12/31/07 | Testing inc.comp. |
| Amendment | 8/2/2007 | \$ 38,000 | 8/1/07-12/31/08 | Ext. term & amount |
| Amendment | 2/28/2008 | \$ 1,500 | 2/15/08-12/31/08 | Training class 3/08 |
| Amendment | 6/11/2008 | \$ 40,000 | 6/1/08-12/31/08 | Inspec.inc.comp.only |
| Amendment | 12/23/2008 | \$ - | 1/1/09-12/31/09 | Testing time ext.only |
| Amendment | 6/2/2009 | \$ 35,000 | no amend dates | Testing inc.comp only |
| Amendment | 12/1/2009 | \$ 8,000 | 12/31/09-3/31/10 | Test inc. time/comp |

The Request for Proposal Process dated June 13, 2008 and the Administrative Directive Manual for the Request for Proposal (RFP) Process dated March 9th, 2010 (Onondaga County Division of Purchase Request for Proposal (RFP) Training Manual March 2010) both from the Onondaga County Executive, state *“the County discourages prolonged extensions and amendments to professional service contracts. The Purchasing Director will review requests to amend or extend professional service contracts and may refer these requests to the Department’s respective Deputy County Executive and/or RFP evaluation committee for review. Requests to extend a professional service contract beyond three (3) years must be submitted for review by the RFP evaluation committee.”*

Recommendation

We recommend Community Development conduct a review of contracts to identify if there are other contracts with continual amendments. If so, Community Development may consider doing a new RFP in order to comply with the County Executive Policy.

Exception 1

Section II item 4 of the County’s RFP Manual requires County Administrator approval prior to issuance of the RFP and a copy of that approval be forwarded to the Director of Purchase. We could find no record in the files of such an authorization, for RFP #10-3520-001, EPA Certified Lead Based Paint Inspection and Testing Services,

Recommendation

We recommend the Department follow the Request for Proposal Process approved by the County Executive.

Exception 2

We noted RFP # 10-3520-001 seeking a contract to provide EPA Certified Lead Based Paint Inspection and Testing Services did not note the expected timeframe of the work. According to Onondaga County Division of Purchase Request for Proposal (RFP) Training Manual March 2010, 8a and 8e. Developing the Scope of Service, the RFP should include the time period as to when the work is to be performed. *Although the RFP states the contract period as being for 1 year the RFP does not specifically state a service time period.*

Recommendation

We recommend where possible, the Department consider putting a time period of work in compliance with Section 8a & 8e of the RFP Manual when completing an RFP.

Exception 3

RFP # 10-3520-001 notes under the Introductions and Instructions Section 1.3. Submission of Proposals 1.3.1, Sealed proposals, (one (1) original, and one (1) electronic copy), will be received by the Onondaga County Community Development, 1100 Civic Center, Syracuse, New York 13202, (435-3358), until 3/12/10 (Date should have been 3/18/10. Notice to vendors sent 3/2/10), 4:30 p.m. EST, at which time they will be publicly opened.

Due to section 1.3.1 incorrectly being part of the RFP, Lead Safe thought the RFP's would be opened publicly. In Lead Safe LLC's complaint letter to the County Executive, the vendor called Community Development twice asking when the bid opening would be for RFP #10-3520-001, but could not get an answer. Lead Safe LLC had to FOIL in order to receive the results of the bids.

This section 1.3.1 should not have been included in the RFP and was included because the Department was using an older template. RFPs are not publicly opened.

Explanation of Exception 3

Section 1.3.4 specifically says "Proposal information is restricted and not publicly available until after the award of the Contract by the Division of Purchase."

An e-mail dated April 16, 2010 from the Purchasing Director to the Law Department and the Director of Intergovernmental Relations states, *"While this individual is correct that the RFP indicated that it would be opened publicly, this language in Section 1.3.1 has been removed and was in error in our RFP template that Community Development used to issue this RFP. It is standard practice NOT to open RFPs publicly. Section 1.3.4 (in RFP #10-3520-001) specifically says "Proposal information is restricted and not publicly available until after the award of the Contract by the Division of Purchase."*

Note: The (3/31/10) template has been revised and omits the language "at which time they will be publicly opened." Section 1.3.1 of the RFP.

Recommendation

We recommend a careful review of the RFP Template is performed prior to its use to protect the County's interests. In addition, we recommend the Departments do not use their own templates. Templates should be maintained and distributed to the Departments by Purchasing as needed.

Exception 4

Letters sent to vendors for RFP #10-3520-001 notifying them of the correct submission deadline date, award and rejections were not dated. We noted hand written notes that they were sent March 2, 2010 and April 6, 2010 respectively.

Recommendation

Official letters to vendors regarding RFPs should be dated to ascertain fair and timely notice and for proper audit trail purposes.

Exception 5

Hard copy proposals for RFP #10-3520-001 received from vendors were not time and date stamped.

Under Submission of Proposals, Section 1.3.3, RFP #10-3520-001 it states, "*Proposals must be received on or before the time and date specified. Proposals received after the time specified will not be considered and will be returned unopened.* Vendors had until March 18, 2010, 4:30 P.M. EST to submit their sealed proposals (one original and one electronic copy)."

Recommendation

We recommend all proposals received be time and date stamped to evidence timely receipt according to the RFP guidelines in order to promote fairness in participation.

Exception 6

The Evaluation Methodology, Section 8.1 of the RFP was not included with RFP #10-3520-001. The evaluation criteria included: compliance with the RFP format requirements, experience, future contract costs and risks, company statistics, responsiveness to the items in Section 7 Scope of Work, references, price, oral presentations, credibility of vendor, County goals and risks vs. rewards.

At the time of this RFP (February 25, 2010) this section read the criteria would be evaluated by the Division of Purchase. The template issued March 31, 2010 by the Purchasing states evaluation by the Department.

Recommendation

We recommend all sections of the RFP be included to follow County policy.

Other Issues

Exception 7

It also appears January/February 2010 invoices were paid from new contract 20010 even though the new contract covered 4-1-10 to 12-31-13

Recommendation

We recommend charges paid are according to the terms in the correct contract to protect the interests of the County.

Draft Response / Lead RFP

The undersigned, as Director of Onondaga County Community Development Division, and after a review of RFP 10-3520-001, EPA-Certified Lead-Based Paint Inspection and Testing Services, and after a review of the undated, "Draft-only—Lead RFP Not for Distribution" forwarded by the Comptroller's Office, responds as follows:

(A) This review appears to have been initiated by a letter dated April 14, 2010, and sent to County Executive Mahoney. A copy is attached hereto as Schedule A. Said letter states in part that there was a "FOIL" request to receive the results of bid, but a review of our records appears to indicate that the bid results were sent to the complainant. However, there was a FOIL for records relating to payments to Eco-Spect, the company that was awarded under said bid.

(B) Response to Comptroller's Draft-only—Lead RFP

1) Page 2

Recommendation regarding negotiating price. There is no rule or law that would require the staff at Community Development to enter into negotiations over the price of an item that was bid on by a contractor. Further in the recommendation on page 3 of the Comptroller's review, it was recommended that when the lowest bidder is not chosen, that the department documented the reasons for not selecting the lowest bidder.

That attached hereto as Schedule B is a detailed documentation supplied at the time by this department and other notes and emails regarding approval of this RFP. Also attached as Schedule C is a document which was in the file but not addressed in any written documents at the time and appears to be a byline from Greg Muno a staff writer at the Syracuse newspapers. This document purports to say that the complainant has had problems in dealing with the staff at the City of Syracuse and this may have played into the thought process at the time. However and again, it is not part of any written documentation and the file does not document how it came to be in our possession.

2) In reference to the statement on page 3 that the anticipated annual budget was \$40,000, this is based on the Lead Grant budget over a three year period. A review of the records show that the actual disbursements for this item were slightly over \$50,000. Again, the reasoning for the \$40,000 was based on the Lead Grant budget.

Regarding the recommendation on page 4 regarding an RFP amount being based on the term of the contract, this would appear to be an issue for Purchasing and not this department, as is the statement at the bottom of page 4 and the top of page 5 regarding continual amendments. Also the new administrative directive dated March 9, 2010, and referred to at the bottom of page 4 was not in place at the time of this RFP.

3) Page 5

Exception 1 – Approval was obtained but not in writing. Written approval is not required.

Exception 2 – Regarding the recommendation regarding putting in the time period, due to the type of work and taking into account weather, etc., exact time frame would be difficult to project.

Exception 3 – Community Development downloaded a template off the County Intranet which was reviewed by Purchasing.

Issue over public opening of RFP was connected to old template which since has been revised. Community Development did not use its own template.

Exception 4 – All letters in the future will be dated.

Exception 5 – This appears to apply to the Purchasing Department.

Exception 6 – This evaluation appears to have been within the purview of the Purchasing department at the time of this RFP.

Exception 7 – The contract was amended, but for some reason appeared under The Economic Development Department, December, 2009. The contract runs through April 1, 2010, amended CQ351248 / Contract 39-001 and was paid by the Comptroller's Office.

Lastly, and in reviewing General Municipal Law § 104-b, the Department appears to be in compliance with same.

December 12, 2011

Robert S. DeMore
Director
Onondaga County Community Development