


GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of Mayor Muriel Bowser



Office of the City Administrator

MEMORANDUM

TO: Mayor Muriel Bowser

THROUGH: Rashad M. Young, City Administrator 

FROM: George A. Schutter, III, Chief Procurement Officer

DATE: January 18, 2016

SUBJECT: Procurement Accountability Review Board After-Action Report #6

The purpose of this memorandum is to provide an After-Action Report following the sixth meeting of the Procurement Accountability Review Board (PARB) on October 28, 2016. Under Section VII of Mayor's Order 2015-165, the following matters are required to be referred to the PARB for its consideration: (1) contracts requiring retroactive approval by the Council of the District of Columbia, (2) noteworthy decisions by the Contract Appeals Board, (3) audit findings, and (4) other procurement matters specifically referred to the Board.

No audit findings or issues affecting the delivery of procurement services in the District were identified as requiring consideration by the Board. Accordingly the PARB's October 28 agenda consisted of the following two items: (1) a District Department of Transportation's (DDOT) letter contract requiring retroactive Council approval, and (2) an adverse Contract Appeals Board decision regarding the Department of General Services' (DGS) procurement of trash collection services. Each issue is discussed in more detail below.

I. DDOT RETROACTIVE CONTRACT ACTION—MOTIVATE, INC.

The first item examined by the PARB concerned the need for retroactive Council approval of a letter contract issued by DDOT and the Office of Contracting and Procurement (OCP) to Motivate, Inc. ("Motivate") for city-wide operation and maintenance of the Capital Bikeshare program. This procurement was a cooperative acquisition whereby the City of Alexandria awarded a contract that established the regional price schedule for the operation and maintenance of the Bikeshare program. Upon award, other jurisdictions, including the District, would procure these services by issuing task orders against the base contract. As the base contract only established the regional price schedule, any other contractual issue required bilateral resolution between the District and Motivate prior a task order being issued. DDOT and OCP's procurement strategy was to issue a letter contract to set the price,



and, after negotiating any other issues, definitize the letter contract for 10-day passive review prior to October 17, 2016.

DDOT and OCP issued a letter contract to Motivate for \$900,000 on September 2, 2016. While it was believed that adequate time was allotted for timely definitization of the contract, two issues arose which led to the need for retroactive Council approval. First, Motivate raised concerns about the specific language contained in the proposed task order—specifically risk allocation and cost reimbursement. This resulted in a longer negotiating period. Second, additional Bikeshare stations were installed to support SafeTrack work. This had the dual effect of increasing the spend rate from \$13,500 to \$15,800 per day and decreasing the time the program had to operate until reaching the \$1 million threshold. To avoid a disruption of the Bikeshare program, a forty-five day extension was issued raising the total letter contract amount to \$1.1 million, which requires retroactive approval by Council.

The PARB observed that three factors contributed to the need for retroactive approval of the Bikeshare contract, specifically limits on staff bandwidth, the absence of a DDOT-specific procurement tracking system, and the risks inherent in using letter contracts. To address these challenges, DDOT and OCP are undertaking the following corrective actions:

- (1) Implement a new procurement system, ProTrack+, to track, manage, and map all DDOT projects from inception to completion;
- (2) Improve communication between DDOT program and contracting staff regarding agency requirements;
- (3) Address issues regarding complex contract terms among program managers, contracting staff, and the Office of the Attorney General earlier in the procurement process;
- (4) Onboard additional contracting staff;
- (5) Realign the organizational structure of agency contracting staff; and
- (6) Ensure OCP staff supporting DDOT obtain their required District contracting certifications.

II. CONTRACT APPEALS BOARD DECISION—DGS TRASH COLLECTION PROCUREMENTS

The second item considered by the Board was successive protests of DGS' awards for trash collection from District government properties. Two protests of DGS' initial award were successively filed by F & L Construction, Inc. ("F&L"). A third protest was subsequently filed against DGS' re-solicitation of the contract by a protest by Jerome L. Taylor Trucking, Inc. ("JLT"). Each of these protests is discussed below.

A. *Initial F&L Protest (CAB No. P-0980)*

On July 22, 2014, DGS issued a request for proposal for a contractor to provide "trash collection services including all labor, materials, equipment, containers, dedicated vehicles, management, recordkeeping, [and] reporting." The solicitation was divided into six award groups with a base period of one year and four one-year option periods. The solicitation was entirely set-aside for Certified Business Enterprises (CBEs).

On November 24, 2014, DGS awarded five of the six award groups to JLT with the remaining group being awarded to another vendor (Vantix) who was not a party to the protest. F&L protested the award to the Contract Appeals Board (CAB) on three grounds: (1) failure to provide a proper post-award debriefing, (2) failure to properly evaluate proposals, and (3) failure to select a responsive, responsible contractor. The CAB, however, did not reach the merits of the protest as DGS agreed to rescind the contract awards and reevaluate all of the responsive offers. The protest was dismissed on March 10, 2015.

B. *Second F&L Protest (CAB No. P-0985)*

Following the dismissal of F&L's protest, DGS convened a new technical evaluation panel to reassess the offerors' proposals. On April 24, 2015, DGS notified all offerors that JLT was solely awarded the contract—*i.e.*, JLT was awarded all six award groups. On May 7, 2015, F&L filed a second protest with the CAB alleging that the award was deficient because: (1) JLT is not a CBE, (2) JLT is not a responsible contractor, (3) JLT's proposal was non-responsive, (4) the District's evaluation process was "fatally flawed" because F&L received comparably lower scores in the reevaluation of its proposal with respect to DGS' initial evaluation, and (5) the contracting officer failed to independently evaluate the offerors' proposals.

Due to the critical nature of the service, DGS issued a determination and findings to proceed with award during the pendency of the protest. A letter contract was issued to JLT on May 15, 2015 for trash removal services not to exceed \$328,278.10. On April 14, 2016, approximately one year after F&L filed its second protest, the CAB sustained the protest and ordered the District to: (1) re-evaluate the proposals for the non-price evaluation factors, and (2) terminate the contract award to JLT if a new award determination was made. DGS notified the CAB that rather than terminate the contract it would not exercise Option Year 1 effectively letting the contract expire on April 26, 2016. An emergency contract was awarded to JLT for 120 days to prevent an interruption in services.

C. *JLT Protest (CAB No. P-1016)*

On May 20, 2016, DGS issued a new solicitation containing five award groups. However, DGS opted to change the solicitation from a request for proposals to an invitation for bids whereby only price is considered in the determination of an award. A concern was raised that JLT, as the incumbent vendor, would be placed at a disadvantage as its price proposal was submitted to Council and became public information.

On June 29, 2016, DGS awarded groups 1, 2 and 3 to F&L and groups 4 and 5 to JLT. JLT responded to this award by filing a protest with the CAB alleging that: (1) DGS failed to evaluate F&L's available trash containers and collection vehicles; and (2) F&L was not a responsible contractor. The CAB dismissed the protest and upheld DGS' award on October 6, 2016.

D. *Root Causes and Corrective Actions*

The PARB identified four root causes that led to the challenges of DGS' trash collection procurement, namely:

- (1) DGS utilized a request for proposals as the source selection method for a commercially-available service that was not reliant upon a specific technical approach.
- (2) The contracting officer relied upon the technical evaluation panel's report without conducting an independent assessment or providing the additional objectivity required by the law.
- (3) Because DGS has independent procurement authority, the contracting officer also serves as the agency's director, potentially resulting in workload constraints that might negatively affect the source selection process and his or her ability to conduct an independent assessment of responsive proposals.
- (4) DGS lacked clear procedures and oversight regarding the proposal evaluations.

To address the aforementioned issues, DGS is undertaking the following corrective actions:

- (1) DGS will henceforth examine program requirements in greater detail so that the most appropriate source selection method is utilized for all procurements. Requests for proposals will be used only when non-price factors are the primary basis for the selection of a contractor.
- (2) DGS will review the organizational structure of its procurement staff.
- (3) DGS will develop procedures regarding source selection methods, documentation of source selection, evaluating proposals by a technical evaluation panel, and conducting a contracting officer's independent assessment. Training on these procedures will subsequently be provided to staff.

If you have any additional questions, or would like further briefing from staff on this matter, please do not hesitate to contact me.

cc: Kevin Donahue, Deputy City Administrator / Deputy Mayor for Public Safety and Justice