

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



ED QUATREVAUX
INSPECTOR GENERAL
October 6, 2010

Honorable Mitchell J. Landrieu, Mayor
City Hall, Room 2E04
1300 Perdido Street
New Orleans, Louisiana 70112

Dear Mayor Landrieu:

I am writing to comment on the City's announced plan to revise its contracting processes. I applaud your commitment to make these processes less cumbersome and eliminate unnecessary delays. In addition to finding ways to make contract approval more efficient, I urge the City to use this opportunity to deal with other problems that have plagued City contracts, including poor contract drafting, inadequate specifications, and contract terms that do not hold contractors accountable.¹ This letter outlines my recommendations for correcting these critical problems.

The Role of the Office of Inspector General

The Inspector General's role in the contracting process is limited. Over the past four months, the Purchasing Bureau has forwarded invitations to bid (ITB) and requests for proposals (RFP) to this Office for review prior to advertising. My staff has provided comments to the Acting Chief Procurement Officer on many of these solicitations. The purpose of these comments is to identify deficiencies, ambiguities, and other concerns with the procurement documents that could impede open and fair competition for City contracts. City officials may choose to make changes in response to our comments or may disregard them.

Based on our review of more than twenty solicitations, this Office has concluded that the City needs to strengthen its capacity to prepare specifications and write contract terms that protect the City's interests. Many of the solicitations we reviewed had vague or ambiguous specifications, compensation terms that put the City at risk for excessive costs, and failed to include performance measures or warranties to ensure that the City gets what it pays for. These deficiencies impede the City's ability to leverage the benefits of a competitive market and get the best value for taxpayers' dollars.

¹ Examples of contracts that rendered the City vulnerable to excessive costs and failed to protect the City's interests are described in this Office's reports, including *Review of the City of New Orleans Professional Services Contract with MWH Americas, Inc.*, *Review of City of New Orleans Professional Services Contract with Disaster Recovery Consultants*, and *Review of City of New Orleans Contract with Telecommunications Development Corporation*, which can be viewed and downloaded from the OIG website at www.nolaoig.org.

This Office's review serves only to identify deficiencies in the procurement process, not correct them. As an oversight agency, this Office does not draft solicitations on behalf of City departments or approve them; these are management responsibilities. The City must develop the professional expertise of its management team to improve City operations, including all aspects of procuring goods and services and managing City contracts.

Role of the Chief Procurement Officer Organization

The City is currently conducting a search for an individual to fill the newly created position of Chief Procurement Officer (CPO). Establishing a CPO organization presents an opportunity to centralize and professionalize all of the City's procurement functions. Professional organizations, including the National Institute of Government Purchasing and the National Association of State Procurement Officers, recommend elevating the placement of the CPO to an executive level and assigning the central procurement office the responsibility for policy making, implementation, and oversight of the full spectrum of procurement functions. A CPO organization can play a lead role in building the City's contracting capability if it is given the necessary authority and resources.

I recommend that the City's new CPO be empowered to create and oversee the implementation of policies and procedures for all procurements across City departments and have a central role in the contracting process. To be effective, the CPO organization must have adequate staffing and expertise to assist departments in all aspects of procurement from drafting specifications, payment terms, and performance measures to managing and evaluating contractor performance. I urge the City to create a CPO organization with the personnel and procurement expertise needed to perform this role.

A strong CPO organization can and should fulfill other functions, such as maintaining centralized files on contractor evaluations and establishing standards for determining whether a low bidder is a responsible contractor. Clear, fair rules and solid documentation for determining contractor responsibility will expedite the selection process and protect the City from bad contractors and unwarranted legal challenges. Other critical CPO functions include appointing RFP evaluation committees and instituting procedures applicable to all departments for receiving, inspecting, and accepting goods and services and for maintaining inventories. All of these activities are essential to a cost effective contracting system.

The Role of the City Law Department

Law Department involvement should not be a bottleneck that makes contract approval slow and arduous, but it would be a mistake to limit the lawyers' role to reviewing contracts after vendors have been selected. For some contracts, in which standardized, boilerplate provisions adequately define the contractual obligations, a Law Department review at the end of the contracting process may suffice. For many contracts, however, provisions establishing the

contractor's responsibilities, warranties, allocation of risks, and other terms will be critical to vendors in deciding whether to compete for the contract and how to calculate a price. For such contracts, it is essential to draft these key contract provisions at the beginning of the procurement and include them in the ITB or RFP.

Because contract terms are integral to the solicitation process, the City should coordinate the roles of the Law Department, the CPO, and departments seeking contracts. Departments can assist the CPO and the City's lawyers in developing effective solicitation documents by communicating contract goals at the beginning of the procurement, before advertising for bids. Legal expertise at this stage can help ensure that the contract terms included in the ITB or RFP maximize competition and protect the City's interests. In contrast, attempting to negotiate key contract terms after a vendor has been selected is likely to result in less favorable terms for the City because the contractor faces no competitive pressure.

In streamlining contract approval, the City should emphasize opportunities for improving communication and coordination among the entities involved, including departments seeking contracts, the CPO, and the Law Department. Combining the knowledge and expertise of these entities is critical to strengthening the City's contracting capabilities.

Conclusion

Based on our review of the City's IFBs and RFPs over the past four months, this Office has concluded that the City must strengthen its procurement capabilities in order to improve its contracting system. My staff will continue to provide comments on the City's procurement documents, but only the responsible City managers can correct the deficiencies described in this letter. For this reason, I recommend that the City establish a CPO organization that can provide the procurement expertise the City needs. The CPO organization should work in close cooperation with departments seeking contracts and with the City Law Department to ensure that all City contracts are competitive and provide high quality goods and services at a reasonable cost.

Although the City may be reluctant to take on additional personnel costs for a CPO organization during a budget crisis, a well-managed procurement system is an investment that pays high dividends in cost-effective contracts.



E. R. Quatrevaux
Inspector General

cc: Nanette Jolivette Brown, City Attorney
Andrew Kopplin, First Deputy Mayor, Chief Administrative Officer
Derrick Muse, Acting Chief Procurement Officer
Andrée Cohen, Purchasing Administrator