



**OFFICE OF INSPECTOR GENERAL  
PALM BEACH COUNTY**

**CONTRACT OVERSIGHT NOTIFICATION  
(2011-N-0006)**

**ISSUE DATE: NOVEMBER 14, 2011**

Sheryl G. Steckler  
Inspector General

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*"Enhancing Public Trust in Government"*

**Town of Palm Beach Shores Invitation to Bid Lawn and Landscape Maintenance Services**

**ISSUES**

On August 15, 2011, Office of Inspector General (OIG) staff attended the Town's Commission meeting, where the Commission discussed and awarded a contract for five (5) years (with an additional five (5) year renewal option) for Lawn and Landscape Maintenance Services. Following that meeting, we reviewed the Town's solicitation and procurement documentation and spoke to Town officials and one bidder as part of our review of this procurement.

The following is a summary of the process that was followed by the Town in conducting this procurement:

On June 13, 2011, the Town advertised the Lawn and Landscape Maintenance Services contract as an Invitation to Bid (ITB). The ITB solicitation included the following statement in the Qualifications for Bidders section: "In addition to cost, the Town may consider other factors including the location of the bidder's offices, and any past contractual relationships with the Town."

In accordance with the Award of Bids instructions, all timely bids that were received on June 30, 2011, would be submitted to a Town Bid Committee for bid tabulation and review on July 8, 2011. Three responsive bids were received and opened on June 30, 2011.

The Bid Committee, consisting of three members, met on July 8, 2011 and evaluated/ranked the three proposals in accordance with the Lawn Maintenance Bid Ranking Procedures (Attachment A) by assigning points in the following four areas (maximum of 60 points): 1) Bidder's proposal based on Request for Proposal (RFP)<sup>1</sup>; 2) Experience; 3) References; and 4) Consideration of all qualifications, company's ability to perform all services. The other 40 points were assigned to a fifth area – "Bid Price", where the lowest bidder received 40 points, the next lowest bidder received 20 points, and the highest bidder received zero points. The Ranking Procedures specifically stated, "Although bid price is a strong factor, as evidenced by the points assigned, the goal is to enter into an agreement with the Contractor that will provide the best overall service to the Town."

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<sup>1</sup> Language taken directly from Bid Evaluation Form (Attachment A)

On August 15, 2011, the Commission, by a 3-2 vote, awarded the contract to Luna Landscaping based on a low bid of \$35,520. The vote occurred after the Commission recessed to hold private, individual discussions with each of the three bidders. The other bids were \$55,200 and \$85,200. During the Commission discussion, the Mayor announced the total points awarded to each bidder as: Luna Landscaping – 48.33 points, S&W Professional Services – 58 points, and Southeastern Horticultural, Inc. – 40.33 points. However, this did not include the points awarded for price. With the points for price added in, the final scoring would be: Luna Landscaping – 88.33 points, S&W Professional Services – 78 points, and Southeastern Horticultural, Inc. – 40.33 points.

In early September, 2011, Luna Landscaping notified the Town that they were withdrawing from the contract. The company's owner indicated that the process to which they were subjected, that included the Commission's private discussion with each bidder and public comments about the excellent job being done by the incumbent contractor (S&W Professional Services), contributed to the decision to withdraw.

Following Luna Landscaping's withdrawal, the Town opted to re-advertise the solicitation with an ITB, which was due September 27, 2011. This time, the ITB clearly stated "The contract will be awarded by the Town Commission to the lowest responsible bidder. In the event of a tie bid, the Town may consider other factors . . .".

Twelve businesses submitted sealed bids for the re-advertised ITB, including the previous three bidders. Bass Property Maintenance submitted the low bid of \$32,795. Luna Landscaping maintained their original bid, but both S&W Professional Services and Southeastern Horticultural, Inc. lowered their bids to \$42,000 (\$13,200 less) and \$42,000 (\$43,200 less), respectively. Bass Property Maintenance was awarded the contract on September 29, 2011 at a Special Commission meeting.

Based on our review of this procurement, we concluded that the Town did not follow sound contracting practices. The process they followed for the original ITB solicitation created a hybrid procurement that appeared to be a cross between standard types of source selections - sealed bidding, (typically an ITB) and sealed proposals, (typically an RFP).

Had the Town followed the process commonly used for an ITB, the lowest bidder would have been selected without the scoring of any other factors and without the need for a private discussion with each bidder. While the lowest bidder, Luna Landscaping, was ultimately selected in the first ITB solicitation, the hybrid process that was followed contributed to Luna Landscaping withdrawing from the contract award. This led to the Town's decision to re-solicit the contract. Also, while the three original bidders had the opportunity to compete in the second ITB solicitation, and did in fact each submit sealed bids, their sealed bids from the first selection process were a matter of public record; thus providing other bidders a competitive price figure to use in submitting their bids.

**RECOMMENDATION**

The Town should review their procurement policy and procedures to ensure they follow standard procurement processes when making competitive solicitations and awards. ITBs (sealed bids) should be awarded based on lowest price from responsive and responsible bidders (Attachment B) and RFPs (sealed proposals) should be awarded based on price and evaluated factors from responsive and responsible bidders. The 2000 Model Procurement Code for State and Local Governments by the American Bar Association provides a good authoritative reference which explains the process and purpose for both an ITB and an RFP. (Attachment B)

**RESPONSE FROM MANAGEMENT**

On November 10, 2011, the Town Manager provided the following response to the OIG recommendation and page 2 of 3, paragraph 6 of this Notification.

“The Town appreciates the recommendation provided by the Inspector General and will take it under advisement for future consideration.”

“Based on the totality of the circumstances the Town’s decision to rebid and the resulting dissemination of the bid amounts during public meetings could not be avoided. Further, all bidders that participated in the second bid were aware that this was being rebid therefore all had the same information and equal advantage.”

**OIG RESPONSE**

Based on management’s response, the OIG will periodically check with the Town Manager to see if any procurement policies or procedural changes to their competitive selection processes were implemented.

*The Office of Inspector General’s Contract Oversight Unit is established to review an organization’s procurement and contracting activity. When necessary, reports will be issued to: 1) identify areas and/or instances where activity conflicts with an organization’s established policies and procedures, and; 2) recommend improvements that will result in more effective and consistent contracting practices.*

## ATTACHMENT A



**TOWN OF PALM BEACH SHORES**  
**LAWN MAINTENANCE BID RANKING PROCEDURES**

Thank you for agreeing to participate in our ranking panel for the Lawn Maintenance Contract bid review. This exercise will be a valuable tool in determining the best contractor for this vital Town service.

Committee members will individually review each bid and then rank the questions independent of the other bids. As you will see, there are varying points assigned for each question which will be used to assess the company's ability to meet the standard being addressed. The point range of each question has been formulated based on the weight of importance to the Town's specific needs; points should be awarded within the range, not necessarily assigning the highest or lowest possible points.

Your responsibility is to rank the bids which will then be tallied, announced, and presented to the Commission for the final bid award. The Commission will award the contract based on what is in the best interest of the Town. Although bid price is a strong factor, as evidenced by the points assigned, the goal is to enter into an agreement with the Contractor that will provide the best overall service to the Town.

The Town Manager and Town Clerk will be functioning as the facilitators of the panel but will not participate in the ranking process. If you have questions or require additional information upon reviewing the enclosed materials, please do not hesitate to request clarification.

ATTACHMENT A



July 8, 2011

**TOWN OF PALM BEACH SHORES**  
**2011 – 2016 LAWN MAINTENANCE BID RANKING FORM**

**BIDDER:** \_\_\_\_\_

		Point Range	Score		
1)	Bidder's proposal based on RFP; requested licenses and insurance documentation included with bid.	0-05			
2)	Experience:				
	Similar size and scope of services	0-10			
	Government contracts	0-10			
	Past or current PBS contractor in good standing	0-10			
3)	References:				
	Commercial/Government	0-10			
	Individual Citizens	0-05			
4)	Consideration of all qualifications; company's ability to perform all services required:	0-10			
		<b>SUBTOTAL:</b>			
		<b>AVERAGE</b>			

## ATTACHMENT B

The 2000 Model Procurement Code for State and Local Governments by the American Bar Association states the award of a contract associated with an ITB “shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the ITB.” The 2000 Model Procurement Code further delineates the differences between competitive sealed bidding and competitive sealed proposals. “Under competitive sealed bidding, judgmental factors may be used only to determine if the supply service, or construction item bid meets the purchase description. Under competitive sealed proposals, judgmental factors may be used to determine not only if the items being offered meet the purchase description but may also be used to evaluate the relative merits of competing proposals. The effect of this different use of judgmental evaluation factors is that under competitive sealed bidding, once the judgmental evaluation is completed, award is made on a purely objective basis to the lowest responsive and responsible bidder. Under competitive sealed proposals, the quality of competing products or services may be compared and trade-offs made between price and quality of the products or services offered (all set forth in the solicitation). Award under competitive sealed proposals is then made to the responsible offeror whose proposal is most advantageous to the [STATE]. Competitive sealed bidding and competitive sealed proposals also differ in that, under competitive sealed bidding, no change in bids is allowed once they have been opened except for correction of errors in limited circumstances. The competitive sealed proposal method, on the other hand, permits discussions after proposals have been opened to allow clarification and changes in proposals provided that adequate precautions are taken to treat each offeror fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors.”

The 2000 Model Procurement Code for State and Local Governments defines the terms of “responsive bidder” and “responsible bidder” as follows:

Responsive bidder – a person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

Responsible bidder – a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.