



Independent Procurement Review Report

Why We Did This Review

In accordance with Atlanta City Charter Chapter 6, Section 2.603, our office is authorized to review all solicitations with an aggregate value of \$1,000,000 or greater, seeking approval by the Atlanta City Council, for file completeness, conflicts of interest, and other areas of perceived deficiency.

FC#	RFP-S-1200078
Estimated Dollar Amount:	\$10,000,000
Type of Procurement:	Request for Proposals
Contract Description:	North Fork Peachtree Creek Storage Tank & Pump Station Design & Construction Management Service
Requesting Department:	Department of Watershed Management
All Proponents:	FWR JV The BenchMark Barge Design Solutions Joint Venture
DOP Responsive Proponents:	FWR JV The BenchMark Barge Design Solutions Joint Venture
Recommended Award:	The BenchMark Barge Design Solutions Joint Venture

TABLE OF FINDINGS

Review Area	Risk/Criteria	Results	Resolved/ Remaining
Evaluation Team	DOP procedures require evaluators to possess the necessary and appropriate experience needed to evaluate the proposals or offerors submitted to the city.	<ul style="list-style-type: none"> One of the three evaluators listed on the collaborative scoring sign in sheet is not a city employee, as required by DOPs standard operating procedures. This employee is a consultant working with the Department of Watershed Management as part of the program management team. 	<p>Resolved</p> <p>DOP replaced the program management team consultant with a city employee for the collaborative scoring evaluation.</p>
Solicitation	<ul style="list-style-type: none"> Bids shall only be evaluated on requirements and evaluation criteria outlined in the formal solicitation (DOP SOP 4.3.6. (E)(3). Having selection criteria established in the solicitation can help prevent bid manipulation. Evaluation criteria that are too vague or subjective can allow for manipulation of the scores 	<ul style="list-style-type: none"> This solicitation was previously cancelled one time: FC-1190552 <p>According to DOP, the department cancelled the solicitations because the CPO deemed all proponents as non-responsive. The cancellation occurred after advertisement closed and the contracting officer completed the responsive review.</p> <ul style="list-style-type: none"> The Office of Contract Compliance required a joint venture in Appendix A of the solicitation package. A joint venture requirement should not be applied to a Brooks Act procurement. 	<p>Resolved</p> <ul style="list-style-type: none"> Acknowledged. FC-1190552 was cancelled due to all proponents being deemed nonresponsive. <p>Resolved</p> <ul style="list-style-type: none"> The Brooks Act (Public Law 92-582), establishes the procurement process by which architects and engineers (A/E's) are selected based upon their competency, qualifications and experience rather than by price. Projects including federal funding for the procurement of A/E's are required to comply with the Brooks Act. Additionally, projects including federal funding and involve transportation, transit,

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			<p>airport or U.S. territory (outside the U.S.), also require the use of DBE goals. Per email from GDOT to OCC (6/21/19), the work contemplated for the North Fork Peachtree project is being done in compliance with a sewer system upgrade made necessary by a consent decree required of the City. Therefore, there is nothing which indicates federal funding in furtherance of transportation, transit, airport or U.S. territory is contemplated. To that end, there can be <u>no</u> DBE goal attached as DBE is specific to federal funds in furtherance of those project types. A second string of emails detail efforts to contact EPA regarding the use of local diversity goals. Per OCC's email to the project team dated 8/9/19, OCC states, "...regarding our decision to utilize the COA's diversity and inclusion goals...I believe we are on solid footing to move forward with the existing solicitation document as suggested by GDOT."</p> <p>Emails mentioned above were inadvertently omitted from the IPRO folder for FC-1190522 but have been uploaded to the IPRO folder for RFP-S-1200078.</p>
<p>Advertisement/ Addenda</p>	<ul style="list-style-type: none"> • Changing the solicitation criteria to favor a particular proponent is a red flag of potential bid rigging (International Anti-Corruption Resource Center). • Too many addenda could indicate unclear specifications or unclear scope of work, which could also favor a particular proponent. 	<p>No findings identified</p>	<p>No response needed</p>

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<p>Submittal</p>	<p>The city code provides that the city shall select no less than three submittals solicited from an RFP that it deems as the most responsible and responsive; provided, however, that if three or fewer offerors respond, the requirement shall not apply (City Code Sec. 2-1189).</p>	<ul style="list-style-type: none"> • DOP allowed one proponent to submit Form 3 documents after the submittal deadline. This proponent is recommended for award. • DOP received two submittals for this solicitation. 	<p style="text-align: center;">Resolved</p> <p>Acknowledged. One proponent did not upload both the Form 3, Financial Disclosure and 3 years of financials in the designated area due to there being only one location identified for the upload. The other proponent uploaded their Form 3 in a different submission section and was able to successfully submit his proposal. The CPO waived the submission of Form 3 as a minor technicality and allowed the proponent to cure his submission by providing Form 3 to the City within 24 hours of receipt of the cure notice. The following condition prompted the waiver:</p> <ul style="list-style-type: none"> ○ Proponent’s response to FC-1190552 included Form 3; Proponent’s response to FC-1190552 also included 3 years of financials which were identical to the ones submitted for RFP-S-1200078; <p>The values reported on Form 3 submitted by proponent to cure RFP-S-1200078 were confirmed to be identical to the ones reported on Form 3 for FC-1190552.</p> <p>The cure notice signed by the CPO was added to the IPRO Folder, 9/18/19.</p>

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Responsive Review	<ul style="list-style-type: none"> DOP procedures require findings to be recorded on a responsive checklist which identifies specific submittal requirements for the project and identifies a bidder's compliance with those required documents. Unclear or inconsistent responsiveness determinations could be a red flag of bid manipulation. 	<p>DOP found all proponents to be responsive; however, IPRO identified potential problems in both proposals:</p> <ul style="list-style-type: none"> One proponent did not submit a complete, notarized Form 3 ("Contractor Financial Disclosure") package, but did provide the financial information required by Form 3. The other proponent did not submit a Form 9 "Prohibited Sources' (Contractors & Vendors) Ethics Pledge. 	<p>Resolved</p> <ul style="list-style-type: none"> Acknowledged. Form 3 not submitted by one proponent. See Submittal review area above. <p>Resolved</p> <ul style="list-style-type: none"> Rejected. Form 9 not submitted by one proponent. <p>Both Proponents provided their Form 9 before the submission deadline. Form 9 was added to the IPRO folders for each of the proponents, 9/18/19.</p>
Conflict of Interest	The city's standards of conduct prohibit employees from having financial conflicts of interests. Contracts must be awarded and administered free from improper influence or the appearance of impropriety.	No Findings Identified	No response needed
Evaluation	<ul style="list-style-type: none"> DOP procedures require procurement staff to compile the evaluation scores, including those from risk management and contract compliance. Public procurement practice states that any arithmetical errors should be corrected, and scores should be recorded in grids/matrices (NIGP). According to the International Anti-Corruption Resource Center, bids that are too close together (less than 1%) or too far apart (more than 20%) could be indicators of collusive bidding. Not applicable for RFPs. 	<ul style="list-style-type: none"> One of the three evaluators listed on the collaborative scoring sign in sheet is not a city employee, as required by DOPs standard operating procedures. This employee is a consultant working with the Department of Watershed Management as part of the program management team. <p>According to DOP's procedures, consultants are allowed to <i>provide advice during the evaluation phase; however, these parties should not be considered evaluators and should not allowed to render a qualitative response.</i></p>	<p>Resolved</p> <p>DOP conducted a second Collaborative Scoring Evaluation with only city employees. The first evaluation will not be used to award the contract. The first evaluation scores will not be released to the evaluation team.</p>

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Cancellation	<ul style="list-style-type: none"> • The Government Accountability Office states that the use of standard language such as “in the best interest of the city” without a specific justification for cancellation could be a fraud indicator. • Transparency International states that effective record-keeping of decisions and reasons for cancellation promotes accountability and transparency. 	No findings identified	No response needed
Award	A contract file should include all project items, to confirm that each phase of the procurement was facilitated appropriately and audit-ready (DOP SOP Sec. 3.18)	No findings identified	No response needed