

Memo to City Manager Anthony Lyons from Purchasing Manager Doug Drymon dated November 20, 2017

Request for opinion on public discussion at the November 16, 2017 City Commission meeting pertaining to Homeless RFP (Grace Marketplace), and possible violations of City Procurement Policy and Procedures.

Memo

To: Anthony Lyons, City Manager
Via: Christopher Quinn, Finance Director
From: Doug Drymon, Purchasing Manager
Date: 11/20/2017
CC: Lisa Bennett, Senior Assistant City Attorney
Betty Baker, Executive Chief of Staff
Gayle Dykeman, Senior Buyer
Subject: Request for opinion on public discussion at November 16, 2017 City Commission meeting pertaining to Homeless RFP (Grace Marketplace), and possible violations of City Procurement Policy and Procedures.

Background:

On July 6, 2017, the City Commission passed Resolution No. 170116 formally adopting a new Procurement Policy of the City of Gainesville. The new Procurement Policy applies to all purchases and contracted services made on or after July 10, 2017, or in the case of purchases made pursuant to solicitations, to purchases made as a result of solicitations issued on or after July 10, 2017.

Section 9 (“Prohibition of Lobbying in Procurement Matters”) of the new Policy states as follows:

Except as expressly set forth in Section 10, during the Cone of Silence, as defined herein, no person may lobby City Officials or employees in a particular procurement process, except the designated Procurement Division representative. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

(**Note:** The term “Cone of Silence” has been substituted in the new Policy for the term “Blackout period” which was the term used in the former Procurement Policy for the period during which no contact with City officials or employees may occur. However, some procurement documents still include the term “blackout period.” These documents will be revised to use the newer term “Cone of Silence” in the future.)

On August 1, 2017, the City Procurement Division released a Request for Proposal (RFP No. CMGR-180019-GD) to Administer and Implement Services for Low Barrier Emergency Services Shelter for Homeless Persons. Proposals were due August 29, 2017 at 3:00 p.m. local time in the Procurement Division office at City Hall.

Section 1 (“Request For Proposal Overview & Proposal Procedures”), Item E (“Contact Person”) of the RFP document included the following language:

To ensure fair consideration and consistent and accurate dissemination of information for all proposers, the City prohibits communication to or with any department, employee, or agent evaluating or considering the proposals during

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the submission process, except as authorized by the contact person.

During the blackout period as defined herein, except as pursuant to an authorized appeal, no person may lobby, as defined herein, on behalf of a competing party in a particular procurement process, City officials or employees except the Procurement designated staff contact in the Procurement division. Violation of this provision shall result in disqualification of the party on whose behalf the lobbying occurred.

The blackout period means the period between the issue date which allows for immediate submittals to the City of Gainesville Procurement Division for an invitation for bid or the request for proposal, or qualifications, or information, or the invitation to negotiate, as applicable, and the time the City Officials and Employee awards the contract. Lobbying means when any natural person, for compensation, seeks to influence the governmental decision-making, to encourage the passage, defeat or modification of any proposal, recommendation or decision by City officials and employees, except as authorized by procurement documents.

There were a total of four (4) Addendums released in conjunction with the RFP. Each Addendum included language prohibiting lobbying, and describing exactly what the blackout period covers. Proposers were instructed to return copies of these Addendums with their proposal, signed so as to indicate their acceptance by the Proposer and acknowledgement of the blackout period.

On the stipulated due date, one proposal was received, from the Alachua County Coalition for the Homeless and Hungry, Inc. (ACCHH). Attachment "Z" of the ACCHH proposal contained the required signed copies of the Addendum.

Following is a recap of the various communications that have taken place between the City and ACCHH in which observance of the blackout period ("Cone of Silence") has been covered:

8/1/17 – Bid Document

8/10/17 – Pre-Bid Meeting – both verbal and as a handout

8/11/17 – Addendum 1 – acknowledged by ACCHH

8/14/17 – Addendum 2 – acknowledged by ACCHH

8/14/17 – Addendum 3 – acknowledged by ACCHH

8/15/17 – via emailed letter from Senior Buyer Gayle Dykeman to Jon DeCarmine, Director of Grace Marketplace/ACCHH

8/18/17 – Addendum 4 – acknowledged by ACCHH

9/7/17 – via emailed letter – acknowledged by ACCHH on 9/8/17

9/13/17 – via emailed letter - Senior Buyer Gayle Dykeman to Jon DeCarmine, Director of Grace Marketplace/ACCHH

10/24/17 – via email - Senior Buyer Gayle Dykeman to Jon DeCarmine, Director of Grace Marketplace/ACCHH

11/3/17 – via email - Senior Buyer Gayle Dykeman to Jon DeCarmine, Director of Grace Marketplace/ACCHH

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Ms. Dykeman has also indicated that she had a very extensive email conversation with John Thornby, one of the members on the Board for Grace, on October 9th, during which she quoted the blackout period language to Mr. Thornby.

Staff Response:

Based on the above information, it is the opinion of Procurement Staff after consultation with the City Attorney's Office that the public presentations made to the City Commission by ACCHH representatives on November 16, 2017 is a violation of Section 9 ("Prohibition of Lobbying in Procurement Matters") of the City's Procurement Policy, as adopted by the City Commission.

Because the Procurement Policy was adopted by Resolution of the City Commission, staff believes the Commission has the following options open to it which it may consider:

- a) Enforce the Procurement Policy and disqualify ACCHH from any further consideration with regards to a contract to administer and implement services for low barrier emergency services shelter for homeless persons at Grace Marketplace. If this option is chosen, then presumably the City will reissue the RFP, or explore another solicitation option for the services required at Grace Marketplace. In either case, an extension of the existing contract with ACCHH or some other alternative for managing Grace Marketplace will need to be explored in the interim.
- b) Not enforce the Policy in this specific instance to allow negotiations with ACCHH to continue, understanding that the main purpose of the blackout period ("Cone of Silence") is to protect the City Commission from undue pressure brought about by vendors or their supporters continually lobbying the Commission to make an award in the vendor's best interest.
- c) Change the Procurement Policy to revise or remove the Cone of Silence provision from the Policy.

At your convenience I am available to meet with you and discuss this matter further if you have any questions or need additional clarification on the points I have covered in this memo.