



State of New Jersey

OFFICE OF THE STATE COMPTROLLER
P.O. Box 024
TRENTON, NJ 08625-0024

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

A. MATTHEW BOXER
State Comptroller

March 17, 2011

Honorable Jerramiah T. Healy
Mayor
City of Jersey City
280 Grove Street
Jersey City, NJ 07302

Mr. Robert P. Antonicello
Executive Director
Jersey City Redevelopment Agency
30 Montgomery Street
Jersey City, NJ 07302

Ms. Maria T. Maio
Executive Director
Jersey City Housing Authority
400 U.S. Highway #1
Jersey City, NJ 07306

Re: Review of Professional Service Contracts Award Process

Dear Sirs and Madam:

Pursuant to N.J.S.A. 52:15C-1 et seq., the Office of the State Comptroller ("OSC") is charged with monitoring and reviewing the solicitation process and award of contracts by units of government to ensure that the process complies with applicable public contracting laws, rules, and regulations. In furtherance of this statutory authority, over the past year OSC requested and reviewed selected contract-related documents from the City of Jersey City (the "City"), the Jersey City Redevelopment Agency (the "Agency") and the Jersey City Housing Authority (the "Authority").

As a result of that review, OSC has identified certain compliance issues in connection with the Agency and the Authority's professional service procurement policies. We write this letter to bring these issues to your attention to ensure that they are addressed going forward.

Failure to Notice the OSC of Qualifying Contracts

The City and its above-named affiliate entities failed to notice OSC of contracts subject to our oversight as required by N.J.S.A. 52:15C-1 et seq. OSC learned of the City's failure to notice upon initiating the procurement review that is the subject of this letter.

OSC distributed a letter in May 2008 to all units of government in New Jersey to provide notice of the statutory contract oversight. Governmental units must inform the OSC of any procurement of \$10,000,000 or more in advance of the solicitation and of contracts exceeding \$2,000,000 no later than 20 business days after the award of the contract. Additional information concerning compliance with the statutory provisions of N.J.S.A. 52:15C-10 along with forms for notification can be found at <http://www.state.nj.us/comptroller/compliance>.

Jersey City Redevelopment Agency and Jersey City Housing Authority's Fair and Open Process

The Agency and the Authority's solicitation documents and awarding resolutions indicate that professional services procurements are conducted through a "fair and open" process. N.J.S.A. 19:44A-20.7. In accordance with N.J.S.A. 19:44A-20.5, "a municipality . . . shall not enter into a contract having an anticipated value in excess of \$17,500 . . . with a business entity, except a contract that is awarded pursuant to a fair and open process, if, during the preceding one-year period, the business entity has made a contribution that is reportable by the recipient under P.L. 1973, c. 83 (C. 19:44A-1 et seq.), to any municipal committee of a political party in that municipality if a member of that political party is serving in an elective public office of that municipality when the contract is awarded or to any candidate committee of any person serving in an elective public office of that municipality when the contract is awarded." A "fair and open process" means at a minimum that the contract shall be: (1) "publicly advertised in newspapers or on the Internet website maintained by the public entity in sufficient time to give notice in advance of the contract"; (2) "awarded under a process that provides for public solicitation of proposals or qualifications"; (3) "awarded and disclosed under criteria established in writing by the public entity prior to the solicitation of proposals or qualifications"; and (4) "publicly opened and announced when awarded." N.J.S.A. 19:44A-20.7.

The Agency and the Authority's professional service solicitation documents fail to meet the above requirements because the solicitation and procurement policy documents permit consideration of factors outside the published criteria. Specifically, the Agency's solicitation documents include a generalized qualifier which states that in addition to specific enumerated criteria, the agency will consider other factors demonstrated to be in the interest of the Agency. Similarly, the Authority's Procurement Policy permits scoring based on "professional experience and qualifications . . . based on facts either inside or outside the proposal."

Under a "fair and open process" a government agency is required to establish the award criteria in writing at the outset, and therefore is not free to entertain "other factors" without providing notice to prospective vendors of what those factors will be. The agency, instead, must specifically name the criteria it intends to consider, and must apply only those criteria in the ultimate evaluative process. (See N.J.S.A. 19:44A-20.7 and <http://www.state.nj.us/dca/lgs/p2p/refs/p2pguide.pdf>, Department of Community Affairs guidance).

Although we note that the documents submitted do not reveal that factors other than the stated criteria were in fact considered in the evaluative process, the Agency and the Authority should be aware that solicitation documents serve as notice to prospective vendors and must clearly describe award criteria. Accordingly, the Agency and the Authority should redraft their solicitation documentation and any professional service policy documents to ensure that these documents clearly state the specific award criteria that will be considered in the evaluative process.

If you have any questions, please call me at (609) 984-2888. Thank you for your continued cooperation in this matter.

Very truly yours,

Dorothy Donnelly
Director, Procurement Division