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Media Relations
Subject: JEA ITN Ethics Report Nov 14 2019.docx
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To: The Chair of the Jacksonville Ethics Commission

From: Carla Miller, Ethics Director

INTERIM REPORT ON THE JEA ITN PROCESS. November 15, 2019

Under the Jacksonville Municipal Code, it is the duty of the Ethics Director to “investigate, review, and report on City issues and proposed programs, contracts and transactions as related to the prevention of conflicts of interest and corruption” (602.621 k).

On October 4, 2019, the Inspector General sent notification to the CEO of the JEA that the Office of Inspector General and the Director of the Office of Ethics Compliance and Oversight would be monitoring JEA’s ITN-127-19 in order to ensure compliance with applicable laws, rules and policies.

Therefore, at the request of the Chair of the Ethics Commission, and in furtherance of the Ethics Office’s required duties under the Code, the Ethics Director is issuing this brief interim report on the activities of the office in the last month in connection with JEA’s ITN-127-19.

10/7/19. The Ethics Director attended the “bid opening” procedure for the ITN.

10/11/19. There was a meeting with the Office of General Counsel (OGC) to discuss the process for observing the confidential ITN proceedings. It was stated that outside counsel for JEA would be in town the next week and would be made available for a meeting.

10/16/19. Meeting at JEA with their outside counsel, OGC attorneys and JEA procurement personnel, the Ethics Director and others. The two main points initiated by the Ethics Director: Sunshine law issues (FS 119.071—what information is confidential?) and conflict of interest issues. It was noted by the Ethics Director that the required “Conflicts Form” signed by the bidders was inadequate to identify conflicts of interest by all involved parties. There was a recommendation by the Ethics Director that there should be an extensive analysis of any conflicts of interest of the JEA employees appointed to the negotiating team. Ethics Office materials on conflict analysis were given to the JEA attorneys to assist them in their review. (The JEA negotiation team had not yet been appointed.)

Additionally, the disclosure of the names of the JEA negotiators under the Florida Sunshine law was discussed. It was the opinion of JEA’s outside counsel that these names could be kept confidential under FS 119.071 for public policy reasons. It was the Ethics Director’s view that they could not be kept confidential under FS 119.071 and public policy would favor disclosure to the citizens. A discussion on the law and public policy took place.

10/21/19. The JEA outside counsel issued a memo: “Public Meeting and Records Exemptions for ITNs”. The memo did not assert that the names of the negotiators could be kept confidential under Florida law.

10/22/19. The JEA attorney met with the Ethics Director who asked if a decision had been made on keeping the names of the negotiators confidential. The Ethics Director was told that JEA had now decided to disclose the names of the negotiators.

The JEA attorney provided the Ethics Director with 3 legal memos on a conflict analysis for the 3 potential negotiators. (“Disclosures of Interactions with Respondents.”) In the memos, it was stated that

“we have been asked to conduct a proactive review of each of the individuals under consideration for appointment... to ensure that such individuals are free from any potential conflicts of interest.”

10/23/19. The Ethics Director was asked to review the memos so that the negotiators could be appointed that day in order to start the negotiation phase of the ITN. After a review of the memos by the Ethics Office, JEA was informed by the Ethics Director that there were some additional inquiries that needed to be made by JEA in order for the memos to be complete.

10/28/19. A review was conducted by the Ethics Director of the contract benefits for the Senior Leadership Staff of JEA. The Ethics Director notified General Counsel that in light of the information in the Senior Leadership Team contracts, it was strongly recommended that the conflict analysis be reviewed by the State Ethics Commission for an opinion prior to appointing the proposed negotiators.

11/1/19. The Ethics Director requested information from JEA’s attorney on whether the negotiators had been appointed, in light of the pending conflict questions. The JEA attorney indicated that the negotiation team had been appointed (Oct. 29, 2019 “Appointment of Negotiation Team”, inter-office memo). The JEA attorney also stated that “it was noted for the record that OGC and SEC (State Ethics Commission) conflicts review has not been completed and that the team, barring any emergency circumstances, would not proceed with substantive action unless and until such time that the review was completed”.

11/4/19. Phone conference with Executive Director of the State Ethics Commission (Ethics Director and OGC attorneys). After legal discussion, OGC represented that it would be submitting requests for opinions on behalf of JEA to the State Ethics Commission regarding the conflict analysis.

11/13/19. The Office of General Counsel submitted an inquiry to the State Ethics Commission: “JEA Conflict of Interest Inquiry: ITN 127-19” on the appointed negotiators.

11/14/19. Written confirmation was received from JEA that there have not been any negotiation meetings for the ITN as of this date and none have been scheduled.

The Ethics Director appreciates the good faith efforts of the Office of General Counsel in moving this conflicts inquiry forward to the State Ethics Commission. The Ethics Director will continue to review all ethics aspects of these proceedings, including additional research on the Sunshine law.