

From: [Hodges, Lawsikia](#)
To: [Gabriel, Jason](#)
Subject: Nutshell
Date: Wednesday, November 06, 2019 11:00:00 AM
Importance: High

A threshold issue to point out is that Council has no control over JEA's procurement as the City Charter is currently written. JEA may adopt its own procurement code and its own procurement procedures. But even Council did over see JEA's procurement (i.e., develop and approve RFPs, ITNs, ITBs and make contract awards), Council would still be limited by general recognized procurement principles relating to modifying certain procurement terms after bids, proposals or replies have been opened.

As to modifying certain defined procurement terms and specifications within a RFP, ITN or ITB, a procuring body cannot develop new defined criteria or specifications after the bids or replies have been opened. The goal of the public bid process is to assure all bidders that the terms by which their bids or proposals are accepted, rejected or evaluated are known in advance through the bid or RFP specifications and criteria. This same principles applies to ITNs. It has generally been recognized and held by Florida courts that local governments must adhere to a defined procurement process in making contract awards. In the context of the JEA ITN procurement, no new *mandatory* minimum requirements or other procedural requirements can be created in addition to the minimum requirements or process set forth in the ITN after bids or replies have been opened. However, nothing prevents additional negotiated deal points from being contained in the final recommended and approved ITN contract award to accomplish the best product or proposal for the government agency.

There are also additional procurement principles regarding changing the scope after the contract award.

Lawsikia

Lawsikia J. Hodges
Deputy Government Operations
Office of General Counsel
Board Certified City, County and Local Government Lawyer
(904) 255-5059 (office)
(904) 630-1731 (fax)

***** Please note that under Florida's very broad public records law, email communications to and from city officials are subject to public disclosure. *****