

OFFICE OF INSPECTOR GENERAL CITY OF JACKSONVILLE



CONTRACT OVERSIGHT REVIEW 2020-10-0004

JEA'S INVITATION TO NEGOTIATE #127-19 PROCESS REVIEW

LISA A. GREEN
INSPECTOR GENERAL

SEPTEMBER 23, 2020

DATE ISSUED

"Enhancing Public Trust in Government Through Independent and Responsible Oversight"



EXECUTIVE SUMMARY

Contract Oversight Review 2020-10-0004

On October 4, 2019, the Office of Inspector General (OIG) notified Aaron Zahn (Zahn), former Managing Director and Chief Executive Officer, JEA, a not-for-profit, Community-Owned Utility, located in Jacksonville, Florida, of the OIG's intent to conduct a Contract Oversight Review, which included attending meetings related to the JEA *Invitation to Negotiate #127-19 for Strategic Alternatives* (JEA ITN #127-19). The OIG conducted this review in accordance with §602.303, *Ordinance Code*.

The sole purpose of the Contract Oversight Review was to monitor and ensure JEA's compliance with its own internal procurement policies and procedures during the JEA ITN #127-19. The Contract Oversight Review provides no conclusions regarding the validity or merits of the JEA ITN #127-19.

The Contract Oversight Review relied upon various records, testimony and real-time observations, to include attending JEA's Management Presentation Meetings held in Atlanta, Georgia, and Jacksonville, Florida, to reach the conclusions and recommendations for corrective actions detailed in this report.

The OIG Contract Oversight Review found the following deficiencies during the ITN process:

- **JEA Policies Lack Approval Authority and Effective Dates**

The former JEA Senior Leadership Team had no established process for ensuring that both the JEA *Operational Procedures (Revised June of 2017)* and the JEA *Procurement Code (Revised 2015)* were consistently annotated as having been approved by an official authority signature line or an effective date.

Deficiency identified during the Solicitation Phase:

- **Failure to Review Replies Against Convicted Vendor List**

The JEA Designated Procurement Representatives (DPRs) failed to review the *Convicted Vendor List*,¹ in accordance with the JEA ITN #127-19 *Section 2.12 (Ethics)*, during the ITN process.

Deficiencies identified during the Evaluation Phase:

- **Failure to Use Secure E-Mail/Mailbox During ITN**

¹ "A list of the names and addresses of those who have been disqualified from the public contracting and purchasing process," maintained by the Department of Management Services, under §287.133, Florida Statutes.

JEA failed to adhere to the *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, by allowing JEA business e-mail accounts to be used to transmit the evaluation results when a secure mailbox, strategicalternative@jea.com, was outlined for use.

- **Lack of Security and Confidentiality of Respondent Replies**

- Evaluation Committee members had access to the Respondent (vendor who submitted a Reply to the JEA ITN #127-19) Names and the Replies (formal responses to the JEA ITN #127-19) ranging in value from approximately \$4 Billion to \$11 Billion. The evaluations were conducted outside of JEA facilities, specifically at personal residences, and in at least one instance in view of family members. In addition, evaluation results were saved to both JEA issued and personal computers, possibly with Respondent Names attached.
- Evaluation Committee members were not asked to sign for receipt of the box of Replies which contained the identities of the Respondents. In addition, confidentiality was sparsely addressed in the *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019.
- The *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, did not address a prohibition against the use of personal computers.

- **Failure to Review and Document Conflicts of Interests for Evaluation Committee**

JEA failed to adequately address conflicts of interest between Evaluation Committee members and the Respondents. Conflicts of interest were not vetted for some Evaluation Committee members and were neither properly documented, nor acted upon, following disclosure by others.

- **Failure to Timely Document Communications during Evaluation Phase**

JEA DPRs were deficient in adherence to the process the DPRs had established in order to document communications, via a communications log, between Evaluation Committee members and the Subject Matter Experts (SMEs) in a timely manner. The purpose of the communication log was to memorialize various requests made by Evaluation Committee members through the DPRs to meet individually with SMEs in order to address questions or concerns related to the Replies.

Deficiencies identified during the Negotiation Phase:

- **Absence of Substantive Discussion During Negotiation Strategy Sessions**

Decisions were announced during negotiation strategy sessions without clear discussion and consensus among Negotiation Team members, which negated the appearance of transparency for the public record, specifically regarding the selection of Atlanta, Georgia, as the location for the JEA management presentation meetings in December of 2019, and the January of 2020 timeline for the Negotiation Team members to make a recommendation to the JEA Board.

- **Failure to Timely Document Communications during Negotiation Phase**

JEA DPRs were deficient in adherence to the process the DPRs had established in order to document communications, via a communications log, between Negotiation Team members and the Subject Matter Experts (SMEs) in a timely manner. The purpose of the communication log was to memorialize various requests made by Negotiation Team members through the DPRs to meet individually with SMEs in order to address questions or concerns related to the ITN process. Entries to this log were made late and only as memory recall of the DPRs could recount.

- **Lack of Process to Document Ex Parte Communication**

JEA DPRs had no established process (i.e. no statement on record either verbal or written) to document the existence or lack of any ex parte communication, which was strictly prohibited by the JEA ITN #127-19 Section 2.11 (*Designated Procurement Representatives and Limit on Communications*), the JEA ITN #127-19 Addendums 2 and 3, and the JEA Procurement Code (Revised 2015) Article 1-110.

In response to OIG's recommendations, JEA advised in August of 2020, a Request for Proposal was issued for a review of current JEA policies and procedures for transparency and public procurement best practices. JEA agreed to incorporate all of OIG's recommendations as part of this review.

In part, JEA advised they are currently in the process of updating processes and procedures related to the JEA Procurement Code and JEA Operational Procedures, to include documentation of all updates and adoptions. In addition, as of September 14, 2020, a cloud-based solution for online sourcing was implemented. This new online sourcing will allow bidders to submit bids to a secure online location and evaluations will be completed and stored in this system. All solicitation documents, addendum, responses, and communication will flow through this system. As part of this overall updating of procurement process and procedures, JEA will be strengthening internal controls regarding conflict of interest vetting for Evaluation Committee members. Overall training for both Evaluation and Negotiation Team members will be incorporated into the JEA Operational Procedures. The JEA Operational Procedures will also include updated processes to track communications with SMEs.

CONTRACT OVERSIGHT REVIEW

On October 4, 2019, the Office of Inspector General (OIG) notified Aaron Zahn (Zahn), former Managing Director and Chief Executive Officer, JEA, a not-for-profit, Community-Owned Utility, located in Jacksonville, Florida, of the OIG's intent to conduct a Contract Oversight Review, which included attending meetings related to the JEA *Invitation to Negotiate #127-19 for Strategic Alternatives* (JEA ITN #127-19). The OIG conducted this review in accordance with §602.303, *Ordinance Code*.

The Contract Oversight Review was initiated to monitor and ensure JEA's compliance with its own internal procurement policies and procedures during the JEA ITN #127-19. The Contract Oversight Review provides no conclusions regarding the validity or merits of the JEA ITN #127-19.

The Contract Oversight Review relied upon various records, testimony and real-time observations, to include attending JEA's Management Presentation Meetings held in Atlanta, Georgia, and Jacksonville, Florida, to reach the conclusions and recommendations for corrective actions detailed in this report.

BACKGROUND

Based on a review of JEA Board meeting minutes, during the November 28, 2017, JEA Board meeting, Board Member and former Chairman Tom Petway suggested the JEA Board consider where JEA fit into the emerging private marketplace of utility companies. A review of subsequent JEA Board meeting minutes, various records, and memorialized meeting notes, disclosed that during the tenure of Zahn, appointed as Interim Managing Director and Chief Executive Officer effective April of 2018, JEA began to consider multiple scenarios regarding the future of JEA, which included five different scenarios as listed and described below:

- Scenario 1:** Status Quo Plan – plan to maintain business as usual, raise rates, and lower contribution to City of Jacksonville (City) fund.
- Scenario 2:** Traditional Utility Response Plan – plan to reduce headcount (jobs), defer capital investments, and raise rates.
- Scenario 3:** Community Ownership Plan (non-traditional response) – plan to transfer ownership of JEA to its customers by reorganizing as a utility cooperative.
- Scenario 4:** Initial Public Offering (IPO) Plan – plan to sell shares in the public capital markets.
- Scenario 5:** Strategic Alternative from ITN 127-19 – plan to receive and evaluate proposals for the sale of JEA.
-

On August 2, 2019, the JEA ITN #127-19 was posted on the JEA procurement internet page titled *Formal Procurement Opportunities*. The deadline for Replies to the JEA ITN #127-19 was October 7, 2019.

On October 4, 2019, the OIG notified Zahn of the OIG's intent to conduct a Contract Oversight Review, in accordance with §602.303, *Ordinance Code*, which included, in part, attending meetings related to the JEA ITN #127-19, in order to monitor and ensure JEA's compliance with its own internal procurement policies and procedures.

GOVERNING DIRECTIVES

JEA Policies, Procedures and other Related Documents

- JEA Procurement Code (Revised 2015)
- JEA Operational Procedures (Revised June of 2017)
- JEA ITN #127-19, posted August 2, 2019
- Evaluation Instructions, JEA ITN #127-19 for Strategic Alternatives Memo, dated October 3, 2019
- JEA Board Meeting Minutes
- Negotiation Instructions, JEA ITN #127-19 for Strategic Alternatives Memo, dated November 6, 2019

CONTRACT OVERSIGHT REVIEW FINDINGS

The Contract Oversight Review focused on Scenario 5, the JEA ITN #127-19. None of the other four scenarios outlined in the Background Section above were reviewed as part of this Contract Oversight Review.

The Contract Oversight Review report highlights the findings identified during the review, followed by recommended corrective actions related to deficiencies identified by the review.

The Contract Oversight Review Findings section is broken into the three-phase ITN process, which includes the Solicitation Phase, the Evaluation Phase, and the Negotiation Phase. Each section outlines the process and highlights any deficiencies identified during the process. The Contract Oversight Review relied upon various records, testimony, and real-time observations, to include attending JEA's Management Presentation Meetings held in Atlanta, Georgia, and Jacksonville, Florida, to reach the conclusions and recommendations for corrective actions detailed in this report.

No attempt was made to interview Zahn who was removed by the JEA Board in January of 2020. Requests to interview Melissa Dykes (Dykes), former JEA President and Chief Operating Officer, who assumed the role of interim Chief Executive Officer after the departure of Zahn, were denied due to ongoing federal matters related to JEA.

RECORDS REVIEW

JEA Procurement Code (Revised 2015)

A review of the *JEA Procurement Code (Revised 2015)* by the OIG, found the document briefly addresses conditions for use of an Invitation to Negotiate (ITN) and states in part, verbatim:

Conditions for Use. The Invitation to Negotiate is a Solicitation which in which [sic] JEA identifies one or more responsive Companies with whom JEA may request revised bids² or responses, culminating in a Best and Final Offer, from which JEA will make its Award decision. The procedures for conducting an Invitation to negotiate shall be described in the Operational Procedures. This sourcing method provides added flexibility for JEA to directly negotiate with vendors during the (IFB) or (RFP) process to obtain the best overall pricing and service levels.

The *JEA Procurement Code (Revised 2015)* directs the user to the *JEA Operational Procedures (Revised June of 2017)*, regarding procedures for utilizing the ITN. Of note, the OIG found that JEA has several prior versions of the *Procurement Code*, dating back to 1996. The *JEA Procurement Code*, as revised, lacks any approval authority signature by the former VP and Chief Supply Chain Officer, or other JEA Authority and lacks an effective date.

JEA Operational Procedures (Revised June of 2017)

A review of the *JEA Operational Procedures (Revised June of 2017)* found the document provides a detailed definition and description of ITNs and outlines the process to be followed. Prior versions of this document dating back to 2006 were reviewed. In contrast to the *JEA Procurement Code (Revised 2015)*, the *JEA Operational Procedures (Revised June of 2017)* has a placeholder for an approval authority signature and effective date. The OIG observed only the April 2011 revision had an official approval authority signature and effective date.

The OIG notes the current version of the *JEA Operational Procedures (Revised June of 2017)*, which was the governing procedure for the JEA ITN #127-19, lacks an approval authority signature by the former VP and Chief Supply Chain Officer, or other JEA Authority, and also lacks an effective date. However, according to testimony of the former VP and Chief Supply Chain Officer, the *JEA Operational Procedures (Revised June of 2017)* were revised in 2017 to include, *Part C, Section 2.3, Intent to Negotiate (ITN)* narrative.

JEA ITN #127-19

Based on a review of the JEA ITN #127-19, the ITN was intended to solicit Replies from parties interested in submitting Replies for JEA's consideration of potential strategic alternatives to eliminate existing business constraints. The JEA ITN #127-19, an eighty-seven-page document,

² For the purposes of this report, Bid and Reply are synonymous.

outlined in specific detail the three-phase ITN process, which included Solicitation, Evaluation, and Negotiation phases.

Based on a review of the JEA ITN #127-19, the following highlights some of the requirements specific to each phase, as specified, in part, *verbatim*:

- **2.1.1 Solicitation Phase**
 - *JEA posts an ITN to its procurement page to initiate the process.*
 - *JEA will hold a public meeting to formally receive Replies at the date, time, and location noted in the Timeline of Events.*
 - *All contact by Vendors must be directed to the Designated Procurement Representatives identified in Section 2.11.*
- **2.1.12 Evaluation Phase**
 - *All Responsive Replies will be evaluated against the evaluation criteria set forth in Section 3.2.3 (the “Evaluation Criteria”) to establish a competitive range of Replies reasonably susceptible of award. JEA may then select the Respondents within the competitive range with which to commence negotiations.*
- **2.1.3 Negotiation Phase**
 - *JEA will meet with the selected Respondents to negotiate terms of a potential contract.*

In addition, the JEA ITN #127-19 also required the following, specified, in part, *verbatim*:

- **2.11 Ex Parte Communication**
 - *Ex Parte Communication is strictly prohibited. Ex Parte Communication is defined as any inappropriate communication concerning this ITN between a firm submitting a Reply and a JEA representative during the time in which this ITN is being advertised through the time of an award resulting from this solicitation process.*
- **2.12 Ethics**
 - *By signing the Reply, the Respondent certifies its Reply is made without any previous understanding, agreement, or connection with any other person, firm, or corporation submitting a Reply to this ITN, and that its Reply is made without outside control, collusion, fraud or other illegal or unethical actions.*
 - *In accordance with section 287.133, Florida Statutes, JEA shall reject Replies from any persons or affiliates convicted of a public entity crime, as listed on the Convicted Vendor List maintained by the Florida Department of Management Services.*
- **3.1 Determination of Responsiveness and Responsibility: Mandatory Requirements Review**

- *In order for Replies to be substantively evaluated, they must first be determined to be responsive, responsible, and meet the Mandatory Requirements set out in Table 3...*
 - *JEA staff shall conduct an initial minimum qualification review of the Replies received for completeness and compliance with all content requirements set forth in this ITN. JEA will also review the information and disclosures submitted with Replies to determine whether Respondents submitting Replies are Responsible Respondents.*
- **3.1.1 Mandatory Requirements Review**
 - *Replies will be evaluated against the Mandatory Requirements set forth in Table 3... on a pass/fail basis. Replies that do not satisfy each and every [sic] of the required Mandatory Requirements will be rejected.*
- **3.2 Evaluation Phase**
 - *Following completion of the Mandatory Requirements review, all Responsive and Responsible Replies deemed to have satisfied the review will be subjected to evaluation in order to determine a competitive range of Replies to advance to the Negotiation Phase of this ITN.*
- **3.2.1 Evaluation Committee**
 - *Consistent with the JEA Procurement Code, an Evaluation Committee consisting of at least three individuals will be appointed to review and evaluate each Reply (the "Evaluation Committee"). Evaluation Committee members may be assisted in their duties by subject matter experts, including, but not limited to, personnel of the Advisors, who shall be available to individually assist Evaluation Committee members in understanding Replies and to provide guidance within their respective areas of expertise to individual Evaluation Committee members upon request.*
 - *A copy of each Reply will be distributed to each member of the Evaluation Committee, and each of the Evaluation Committee members will separately, independently, and individually evaluate and rank the Replies using the Scoring Guidelines and Evaluation Criteria set forth in Table 4 of Section 3.2.2 and Table 5 of Section 3.2.3, respectively.*
- **3.3.1 Respondent Shortlist**
 - *Based on the final overall scores for each Reply, as calculated by the Designated Procurement Representatives, JEA will determine a competitive range of Replies reasonably susceptible of award for negotiations.*
 - *JEA may post a Notice of Intent to Negotiate on the JEA procurement page.*
- **3.3.2 Negotiation Team**
 - *Consistent with the JEA Procurement Code, a Negotiation Team consisting of at least three individuals will be appointed to conduct negotiations with Respondents within the competitive range, review revised Replies and Best and Final Offers ("BAFO"), and formulate a recommended award ("the "Negotiation Team") [sic]. The Negotiation Team may be assisted in their duties by subject matter*

experts, including, but not limited to, personnel of the Advisors, who shall be available to assist the Negotiation Team, to provide guidance within their respective areas of expertise to the negotiation Team, and to participate in negotiations with Respondents as needed.

- **3.3.3 Request for Revised Replies**

- *Upon the determination of the competitive range, Respondents determined to be within the competitive range will be asked to enter into a non-disclosure agreement (“NDA”) for purposes of receiving and accessing certain exempt or confidential information relating to JEA, including, without limitation, trade secrets, material non-public information, or other confidential information. Following the execution of the NDA, Respondents will be granted access to the JEA Virtual Data Room, which will include a confidential information presentation on JEA and certain financial projections.*

- **3.3.4 Written and Oral Negotiations**

- *The Negotiation Team may, but is not required to, engage in formal scoring for purposes of identifying Respondents with whom it wishes to engage in further negotiation.*
- *Respondent(s) invited to negotiate may be asked to provide more detailed clarifications of their Replies and/or to provide interactive presentations of their Replies.*
- *Negotiations will not be open to the public but will be recorded. All recordings of negotiations and any records related to negotiation sessions are public record and can be released pursuant to a public records request after a Notice of Intent to Award is posted or 30 days after the submission of the final Replies to the last Request for BAFO(s).*
- *JEA anticipates that negotiation meetings may be conducted in Jacksonville, Florida or New York, New York. JEA reserves the right to schedule negotiations at a different location or to conduct negotiation sessions telephonically.*

The following sections highlight the OIG’s Contract Oversight Review, which includes a records review, observations and testimony related to the Solicitation Phase, Evaluation Phase and Negotiation Phase.

Section I: Solicitation Phase

JEA held a public bid-opening meeting on October 7, 2019. The bid-opening meeting was publicly noticed on the JEA procurement internet page, as outlined within the JEA ITN #127-19 Section 2.2 (*Timeline of Events*) and subsequent JEA ITN #127-19 *Strategic Alternatives Addendum Five*.

The Contract Oversight Review determined that the former VP and Chief Supply Chain Officer and the Chief Procurement Officer served as the Designated Procurement Representatives (DPRs) for the JEA ITN #127-19. The DPRs were responsible for oversight of Section 3.1

(*Determination of Responsiveness and Responsibility: Mandatory Requirements Review*) of the JEA ITN #127-19.

Based on records and testimony, and as noted on the published *ITN #127-19 Bid Tabulation Form*, one of the Replies was determined to not have been submitted in accordance with the requirements of the JEA ITN #127-19 and was returned, unopened, to the Respondent (vendor who submitted a Reply to the JEA ITN #127-19).

The OIG Contract Oversight Review verified the remaining sixteen Replies, listed below and numbered as opened (e.g. Reply 1, Reply 2 and so on), were reviewed for mandatory requirements as noted in the JEA ITN #127-19 *Section 3.1 (Determination of Responsiveness and Responsibility: Mandatory Requirements Review)*.

Table One

Respondent Number	Respondent Name
Reply 1	Uniti Group, Inc.
Reply 2	3 Degrees, Inc.
Reply 3	JEA Public Power Partners (PPP)
Reply 4	Macquarie Infrastructure and Real Assets, Inc. (MIRA Inc.)
Reply 5	IFM Investors PTY LTD
Reply 6	NextEra Energy
Reply 7	Emera Inc.
Reply 8	Veolia Water North America-South, LLC
Reply 9	American Public Infrastructure, LLC
Reply 10	Hargray Communications Group, Inc.
Reply 11	American Water Works Company, Inc.
Reply 12	Olympus Power, LLC
Reply 13	Respondent A (Respondent did not consent to release of name)
Reply 14	Algonquin Power & Utilities Corp.
Reply 15	Duke Energy
Reply 16	New Solutions for Business

Three of the sixteen Replies, listed below, were determined by the JEA ITN #127-19 *Mandatory Requirements* form to have not met the minimum mandatory requirements in accordance with the JEA ITN #127-19 *Section 3.1 (Determination of Responsiveness and Responsibility: Mandatory Requirements Review)*, and were no longer being considered for the JEA ITN #127-19.

Table Two

Respondent Number	Respondent Name
Reply 2	3 Degrees, Inc.
Reply 12	Olympus Power, LLC
Reply 16	New Solutions for Business

The remaining thirteen complex and comprehensive Replies, listed below, were evaluated by the Evaluation Committee in accordance with the JEA ITN #127-19 Section 3.2 (*Evaluation Phase*). As part of the Contract Oversight Review, the OIG independently verified the Evaluation Committee's calculations for each of the thirteen Respondents. The Respondents Replies, listed below in **Table Three**, ranged in value from approximately \$4 Billion to \$11 Billion.

Table Three

Respondent Number	Respondent Name
Reply 1	Uniti Group Inc.
Reply 3	JEA Public Power Partners (PPP)
Reply 4	Macquarie Infrastructure and Real Assets Inc. (MIRA Inc.)
Reply 5	IFM Investors PTY LTD
Reply 6	NextEra Energy
Reply 7	Emera Inc.
Reply 8	Veolia Water North America-South, LLC
Reply 9	American Public Infrastructure, LLC
Reply 10	Hargray Communications Group, Inc.
Reply 11	American Water Works Company, Inc.
Reply 13	Respondent A (Respondent did not consent to release of name)
Reply 14	Algonquin Power & Utilities Corp.
Reply 15	Duke Energy

Four of the Replies, listed below, were scored below the minimum evaluation requirements by the Evaluation Committee and did not move forward in the JEA ITN #127-19 process.

Table Four

Respondent Number	Respondent Name
Reply 1	Uniti Group Inc.
Reply 8	Veolia Water North America-South, LLC
Reply 10	Hargray Communications Group, Inc.
Reply 14	Algonquin Power & Utilities Corp.

As specified in the JEA ITN #127-19 Section 3.2.2 (*Scoring Guidelines*) and Section 3.2.3 (*Evaluation Criteria*), and independently verified by the OIG, each of the Replies were evaluated based on the same eight criteria.

In accordance with the JEA ITN #127-19 Section 3.2.1 (*Evaluation Committee*), the scores were calculated, "by multiplying the evaluator score for each criteria by the criteria weight and dividing by four." The maximum number of points possible was one hundred (100). The evaluation criteria and corresponding weight value are listed below:

Table Five

Description of Criteria	Weighted Value
Proposal to achieve JEA's goals in the ITN	20
Experience and customer commitment	15
Economic development and benefits to Jacksonville	10
Employee retention and benefits	10
Innovation plan	15
Environmental, social and governance	10
Community stewardship	10
Financial stability	10

An Evaluation Committee meeting was held on October 14, 2019, in accordance with *Section 2.2 (Timeline of Events)* of the JEA ITN #127-19, and two subsequent Addendums, during which each Evaluator publicly and formally submitted their individual scores.

Testimony obtained from the Evaluation Committee members validated that each Evaluator individually scored the Replies and submitted the scores to the DPRs. The DPRs compiled the individuals scores and determined an overall score for each Reply.

As noted in the JEA ITN #127-19 *Section 3.2.1 (Evaluation Committee)*, a total score of 75 points was required to move forward in the JEA ITN #127-19 process. According to a review of the scores compiled by a DPR, nine Replies received a score at or above the required 75 points and the following Respondents, listed below, were provided a *Notice of Intent to Negotiate* on October 14, 2019.

Table Six

Respondent Number	Respondent Name
Reply 3	JEA Public Power Partners (PPP)
Reply 4	Macquarie Infrastructure and Real Assets, Inc. (MIRA, Inc.)
Reply 5	IFM Investors, PTY LTD
Reply 6	NextEra Energy
Reply 7	Emera, Inc.
Reply 9	American Public Infrastructure LLC
Reply 11	American Water Works Company, Inc.
Reply 13	Respondent A (Respondent did not consent to release of name)
Reply 15	Duke Energy

As outlined in the JEA ITN #127-19 *Section 2.12 (Ethics)*, JEA “shall reject replies from any persons or affiliates convicted of a public entity crime, as listed on the *Convicted Vendor List* maintained by the Florida Department of Management Services.” Testimony obtained from both

DPRs and the Chief Procurement Officer, revealed that no review of the *Convicted Vendor List* was completed.

Deficiencies Related to Solicitation Phase

The OIG's review of the Solicitation Phase concluded that the DPRs failed to review the Replies against the *Convicted Vendor List* in accordance with the JEA ITN #127-19 Section 2.12 (*Ethics*).

Section II: Evaluation Phase

Records Related to Security and Confidentiality of Replies

Based on a review of records, two documents address the security and confidentiality of the Replies:

- (1) The *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, was provided to the Evaluation Committee members and specified, in item fourteen on page five, the Replies were confidential, and stated in part, verbatim:

*At this time, all material submitted as part of the Replies are confidential.
Do not disclose any information contained in the Replies with anyone.*

- (2) The JEA ITN #127-19 *Strategic Alternatives Addendum Four*-Item 35, stated in part, verbatim:

*It is the intent of JEA that the that the identity and contents of
Respondent's Reply will not be publicly disclosed until the earlier of the
posting of a Notice of Intent to award or 30 days after the submission of
the final Replies to the last Request for BAFO(s).*

Evaluation Committee

As part of the Contract Oversight Review, the OIG reviewed records and conducted interviews of the Evaluation Committee. Based on the JEA ITN #127-19 Section 3.2.1 (*Evaluation Committee*) and JEA *Operational Procedures (Revised June of 2017)* Section 6.4, the Evaluation Committee was required to consist of a minimum of three members. JEA selected a five-member Evaluation Committee of JEA employees, listed below, appointed by an *Appointment of the Evaluation Committee for JEA ITN 127-19 Strategic Alternative* Memo dated October 3, 2019:

1. Former VP and Chief Information Officer
2. Former VP and Chief Human Resources Officer
3. Director Economic Development and Real Estate
4. Director Financial Planning and Analysis
5. JEA Treasurer

The interviews of the Evaluation Committee members were conducted under sworn oath and audio recorded. All the Evaluation Committee members testified consistently that they were provided with a complete set of Replies to review, and that the Replies were provided in locked boxes with a combination lock that could be set to their choosing.

All the Evaluations Team members also testified consistently that a “key,” a list containing an assigned Respondent Number with the Respondent Name was included in the locked boxes, or that the Evaluation Matrix form included the Respondent Names, which allowed the Evaluation Committee members to know the identity of the Respondents. None of the Evaluation Committee members signed any type of log acknowledging receipt of the Replies when they received their respective locked box from the DPRs. Four of the five Evaluation Committee members testified that one of the DPRs provided the locked box to them in their respective offices. The Director of Financial Planning and Analysis testified that she was on personal leave at the time she evaluated the Replies and stated that the locked box containing the Replies had been hand delivered to her residence by one of the DPRs.

All the Evaluations Team members testified that upon concluding their respective evaluation of the Replies, each e-mailed their final *Evaluation Matrix* results to one or both DPRs: the former VP and Chief Supply Chain Officer and the Chief Procurement Officer.

At least three of the Evaluations Team members evaluated Replies at their residence. The Director of Economic Development and Real Estate testified that he saved his *Evaluation Matrix* spreadsheet on his personal home computer and was unsure if he kept the Respondent’s names on the spreadsheet or changed them to the Respondent Numbers. Additionally, the Director of Financial Planning stated she did not take any action to prevent her husband from seeing the names of the Respondents on the documents while evaluating the Replies at her residence. Further, the VP and Chief of Human Resources stated he retained the *Evaluation Matrix* spreadsheet on his JEA issued laptop and was unsure if the spreadsheet contained the Respondent’s names or the Respondent Numbers.

During the Contract Oversight Review, the OIG learned that the DPRs set up a dedicated mailbox, strategicalternative@jea.com, for use during the ITN process. The *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, stated “The Evaluators shall only communicate with the Designated Procurement Representatives.” This same memo provided the names of the DPRs and provided their phone numbers and the strategicalternative@jea.com e-mail address. All members of the Evaluation Committee e-mailed their *Evaluation Matrix* results to the respective JEA business e-mail addresses for the former VP and Chief Supply Chain Officer or the Chief Procurement Officer rather than the dedicated ITN mailbox. The Contract Oversight Review disclosed that the DPRs did not use the dedicated mailbox consistently throughout the ITN process.

Lack of Documented Conflict of Interest Reviews

Two of the five Evaluation Committee members interviewed acknowledged they had potential conflicts of interest concerns once they opened the Replies. Each Evaluator testified they

reported the potential conflicts of interest concerns but could not provide any documentation to support their respective testimony.

- The former JEA Chief Information Officer (former CIO) attended a meeting with one of the Respondents on September 6, 2019, regarding dark fiber usage after the JEA *ITN #127-19* was posted and prior to the evaluations. He stated that he brought this to the attention of someone within JEA but could not recall the individual to whom he reported this information. In addition, the former CIO could not provide any documentation that this potential conflict concern was discussed, documented or addressed.
- The JEA Treasurer disclosed he had prior working relationships with individuals involved with at least two of the Respondents. He brought these conflicts to the attention of the former JEA Chief Legal Officer and the former VP and Chief Supply Chain Officer; however, the Treasurer could not provide any documentation that this potential conflict concern was discussed, documented or addressed.

The other three Evaluation Committee members, the Director of Financial Planning, the Chief Human Resources Officer, and the Director of Economic Development and Real Estate, testified they were never asked by anyone at JEA if there were any potential conflicts once the Respondent Names were revealed to them.

The *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, addresses ex parte communication and attempted improper influence of an Evaluation Committee member but does not address how or if an appointed Evaluation Committee member should report any conflict of interest.

Deficiencies Related to Evaluation Phase

The Evaluation Committee members failed to consistently use the strategicalternative@jea.com mailbox for all correspondence relating to Evaluation Committee members, Replies, questions, and *Evaluation Matrix* forms, as outlined in the *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019.

By allowing the Evaluation Committee members to remove the Replies from a secure location under the control of the DPRs, the confidentiality of the Replies was compromised. According to testimony received by the OIG, the Replies were left in sight of family and *Evaluation Matrix* spreadsheets were saved to personal home computers.

Only one simple sentence relating to confidentiality was referenced within the *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, and there was no specific prohibition against the use of personal computers during the evaluation process. In addition, there was no formal documentation outlining who had access to the Replies.

Based on records and testimony, it was clear that the former JEA Senior Leadership Team's intention was to keep the identities of the Respondents confidential, as outlined in the *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, and the

JEA ITN #127-19 *Strategic Alternatives Addendum Four*. However, the DPRs allowed a “key,” a list containing an assigned Respondent Number and Respondent Names and *Evaluation Matrix* forms with Respondent Names, in locked boxes to be removed from the security of the JEA premises during the evaluation process. This lack of security could have exposed JEA to the risk of potential bid protests with major financial and legal ramifications had the ITN process continued.

Two Evaluation Committee members testified that concerns related to conflicts of interest were brought to the attention of former JEA Senior Leadership Team members. In at least one instance, an Evaluation Committee member, prior to the evaluation of the Replies, brought conflict of interest concerns to the attention of the former JEA Chief Legal Officer and the former VP and Chief Supply Chain Officer; however, there was no document available to verify that any review of these potential conflicts of interest were properly vetted. The failure to address any potential conflicts of interest could have exposed JEA to the risk of potential bid protests with major financial and legal ramifications had the ITN process continued.

During the ITN process, the OIG made several process improvement recommendations for strengthening record keeping to the DPRs and the former JEA Chief Legal Officer. The OIG noted during the Evaluation Phase:

- A log for DPRs and Evaluation Committee members and Subject Matter Experts (SMEs) to track communications for formal questions and answers was not maintained up to date during the JEA ITN #127-19 process.

Section III: Negotiation Phase

The OIG review of records verified that in accordance with the JEA ITN #127-19 *Section 3.3.2 (Negotiation Team)* and JEA *Operational Procedures (Revised June of 2017)*, a Negotiation Team consisting of three City employees, listed below, was created via an *Updated Appointment of the Negotiation Team for JEA ITN #127-19 Strategic Alternatives* Memo dated November 25, 2019:

1. Deputy Chief Administrative Manager (Lead Negotiator)
2. COJ Treasurer
3. Chief of Engineering Construction Management

The OIG review of JEA records and testimony of former VP and Chief Supply Chain Officer, determined that one previous Negotiation Team comprised of JEA employees and a JEA Board member had been previously appointed. Testimony from one member of this team, Director Economic Development and Real Estate, stated he believed the team was removed due to delays caused by a conflict of interest review. The OIG had heard of the existence of an original Negotiation Team, comprised of two JEA employees and an attorney, however, the OIG could not independently verify this information. However, the OIG determined that the City team referenced above was the only Negotiation Team to participate in negotiation sessions (meetings with Negotiation Team, SMEs and Respondents to discuss Replies) with the Respondents.

Testimony provided by the Negotiation Team members indicated the purpose of the team was to determine the best value for JEA and the City.

Negotiation Strategy Sessions and Negotiation Sessions

From November 25, 2019 through December 23, 2019, representatives of the OIG attended negotiation strategy sessions (meetings of the Negotiation Team with SMEs to discuss decisions and strategy) and negotiation sessions (meetings of the Negotiation Team with SMEs and Respondents to discuss terms of a potential contract).

Per the timeline outlined in the JEA ITN #127-19 Section 2.2 (*Timeline of Events*) the date for posting a Notice of Intent to Award was *To Be Determined*. During a negotiation strategy session attended by the OIG on December 3, 2019, a deadline of the end of January 2020 was announced by the Lead Negotiator as the date the recommendation would be provided to the JEA Board of Directors. One Negotiation Team member commented that he agreed, and he thought the team could move expeditiously. The third Negotiation Team member did not provide a response. No prior discussion of this timeframe was discussed during any negotiation strategy meeting attended by the OIG, and no discussion was heard on any of the recordings of the three meetings not attended by the OIG. There was no substantive conversation during the negotiation strategy session which supports the justification for the timeline decision. Testimony provided by the former VP and Chief Supply Chain Officer (one of the DPRs), was inconsistent and he was unable to explain who made the determination and how the timeframe had been determined.

During later negotiation sessions, multiple Respondents stated the end of January timeframe would affect the value of their proposals. However, according to the testimony provided by the Negotiation Team members, these comments did not justify a need to extend the time to provide the recommendation to the JEA Board.

According to testimony, the decision to hold the management presentation meetings in Atlanta, GA was made collectively by JEA Senior Leadership, to include Zahn and Dykes. Per a review of the JEA ITN #127-19 Section 3.3.4(B) (*Written and Oral Instructions*) negotiation meetings may be held in Jacksonville, Florida; New York, New York; or a different location.

Testimony by the Lead Negotiator and the Chief Procurement Officer (one of the DPRs) revealed that Atlanta was chosen to save money, as compared to New York, and the ability to retain anonymity among the Respondents. The Former VP and Chief Supply Chain Officer announced the Atlanta, Georgia, location during the November 26, 2019, negotiation strategy session attended by representatives of the OIG. The Negotiation Team members had no discussion or made any decision regarding the selection of Atlanta, Georgia, during the November 26, 2019 negotiation strategy meeting. The Lead Negotiator of the Negotiation Team testified Zahn and/or Dykes made the decision to hold meetings in Atlanta, Georgia, and that decision was a management decision which did not need to be discussed. The former VP and Chief Supply Chain Officer (one of the DPRs), was inconsistent in his testimony regarding who made the selection of Atlanta, Georgia.

In January of 2020, the OIG had an informal conversation with Dykes regarding the Atlanta, Georgia location. Dykes advised JEA was trying to figure out an alternate location because JEA realized that New York would be expensive. Dykes advised that she, Zahn, the former VP and Chief Supply Chain Officer, and the former Chief Administrative Officer discussed Atlanta, Georgia as a location that would be less expensive and provide confidentiality among the Respondents. Ultimately, Zahn would have made the final selection of Atlanta, Georgia. An attempt to formally interview Dykes was declined by her legal counsel.

Management Presentation Meetings

Six of the remaining nine Respondents, previously listed in Table Six, page 12, were chosen by the Negotiation Team during a negotiation strategy session on December 4, 2019, after a review and assessment of revised Replies. During a separate negotiation session on the same day, the Negotiation Team placed telephone calls to the six Respondents and invited them to attend in person JEA management presentation sessions from December 10, 2019 through December 16, 2019. Five of the management presentation sessions were held in Atlanta, Georgia, and due to a scheduling conflict, one was held in Jacksonville, Florida, as listed below:

Management Presentations Held in Atlanta, Georgia

- December 10, 2019 – NextEra Energy
- December 11, 2019 – Duke Energy
- December 12, 2019 – Emera Inc.
- December 12, 2019 – JEA Public Power Partners (PPP)
- December 13, 2019 – American Water Works Company, Inc.

Management Presentation Held in Jacksonville, Florida

- December 16, 2019 – Macquarie Infrastructure and Real Assets Inc. (MIRA)

On December 16, 2019, a draft version of the presentation, *Management Presentation, Project Scampi December 2019*, was accessed on a local computer drive by a JEA employee. This access resulted in the document being distributed at a public meeting between two City Council members and subsequently made public prior to the scheduled presentations (OIG will address this issue under a separate OIG Report of Investigation).

The OIG attended and noted that all six JEA presentations of the *Management Presentation, Project Scampi December 2019* were consistent in both format and in the presentation of the information to each Respondent. Each Respondent (attended by numerous representatives on behalf of each Respondent) was afforded the opportunity to present questions to both JEA Senior Leadership team in attendance and the Negotiation Team upon the conclusion of the presentations.

Deficiencies Related to Negotiation Phase

Neither the JEA *Operational Procedures (Revised June of 2017)*, Part C Section 2.3 and Part C Section 7.8 (Negotiations) or the *Negotiation Instructions, JEA ITN #127-19 for Strategic Alternatives* Memo, dated November 6, 2019, addressed ensuring that material decisions made

are clearly discussed among all Negotiation Team members and “on the record” for transparency and public record or ensuring all Negotiation Team members had an opportunity to adequately provided input. For example, the Atlanta, Georgia location of the JEA management presentations was announced by a DPR and not discussed among the Negotiation Team members. In addition, the ITN process timeline decision to report the ITN recommendation to the JEA Board by the end of January of 2020 was announced by the Lead Negotiator to the other Negotiation Team members with minimal comments and no substantive discussion.

During the ITN process, the OIG made several process improvement recommendations for strengthening record keeping to the DPRs and the former JEA Chief Legal Officer. Issues of concern the OIG noted during the Negotiation Phase are listed below:

- A log for communications and meetings between SMEs and Negotiation Team members was not maintained up to date during the JEA ITN #127-19 process. Entries to this log were made late and only as memory recall of the DPRs could recount.
- Ex parte communication was strictly forbidden in accordance with the JEA ITN #127-19 Section 2.11 (*Designated Procurement Representatives and Limit on Communications*), the JEA ITN #127-19 Addendums 2 and 3, and the JEA Procurement Code (Revised 2015) Article 1-110. However, no statement on record, either verbally or written, was captured during the negotiation strategy sessions or negotiation meetings to document the existence or lack of any ex parte communication during the ITN process. The OIG recommended to JEA DPRs and the former JEA Chief Legal Officer that such an announcement or formal documentation of any ex parte communication should be formalized during Negotiation Phase meetings. However, the ITN process ended prior to JEA initiating any method of documentation or process to address whether there had been any ex parte communications.

CONCLUSIONS/OBSERVATIONS

The OIG Contract Oversight Review found the following deficiencies during the ITN process:

- **JEA Policies Lack Approval Authority and Effective Dates**

The former JEA Senior Leadership Team had no established process for ensuring that both the JEA *Operational Procedures (Revised June of 2017)* and the JEA *Procurement Code (Revised 2015)* were consistently annotated as having been approved by an official authority signature line or an effective date.

Deficiency identified during the Solicitation Phase:

- **Failure to Review Replies Against Convicted Vendor List**

The JEA Designated Procurement Representatives (DPRs) failed to review the *Convicted Vendor List*, in accordance with the JEA ITN #127-19 Section 2.12 (*Ethics*) during the ITN process.

Deficiencies identified during the Evaluation Phase:

- **Failure to Use Secure E-Mail/Mailbox During ITN**

JEA failed to adhere to the *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, by allowing JEA business e-mail accounts to be used to transmit the evaluation results when a secure mailbox, strategicalternative@jea.com, was outlined for use.

- **Lack of Security and Confidentiality of Respondent Replies**

- Evaluation Committee members had access to the Respondent (vendor who submitted a Reply to the JEA ITN #127-19) Names and the Replies (formal responses to the JEA ITN #127-19) ranging in value from approximately \$4 Billion to \$11 Billion. The evaluations were conducted outside of JEA facilities, specifically at personal residences, and in at least one instance in view of family members. In addition, evaluation results were saved to both JEA issued and personal computers, possibly with Respondent Names attached.
- Evaluation Committee members were not asked to sign for receipt of the box of Replies which contained the identities of the Respondents. In addition, confidentiality was sparsely addressed in the *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019.
- The *Evaluation Instructions JEA ITN #127-19 for Strategic Alternatives* Memo dated October 3, 2019, did not address a prohibition against the use of personal computers.

- **Failure to Review and Document Conflicts of Interests for Evaluation Committee**

JEA failed to adequately address conflicts of interest between Evaluation Committee members and the Respondents. Conflicts of interest were not vetted for some Evaluation Committee members and were neither properly documented, nor acted upon, following disclosure by others.

- **Failure to Timely Document Communications during Evaluation Phase**

JEA DPRs were deficient in adherence to the process the DPRs had established in order to document communications, via a communications log, between Evaluation Committee members and the Subject Matter Experts (SMEs) in a timely manner. The purpose of the communication log was to memorialize various requests made by Evaluation Committee

members through the DPRs to meet individually with SMEs in order to address questions or concerns related to the Replies.

Deficiencies identified during the Negotiation Phase:

- **Absence of Substantive Discussion During Negotiation Strategy Sessions**

Decisions were announced during negotiation strategy sessions without clear discussion and consensus among Negotiation Team members, which negated the appearance of transparency for the public record, specifically regarding the selection of Atlanta, Georgia, as the location for the JEA management presentation meetings in December of 2019, and the January of 2020 timeline for the Negotiation Team members to make a recommendation to the JEA Board.

- **Failure to Timely Document Communications during Negotiation Phase**

JEA DPRs were deficient in adherence to the process the DPRs had established in order to document communications, via a communications log, between Negotiation Team members and the Subject Matter Experts (SMEs) in a timely manner. The purpose of the communication log was to memorialize various requests made by Negotiation Team members through the DPRs to meet individually with SMEs in order to address questions or concerns related to the ITN process. Entries to this log were made late and only as memory recall of the DPRs could recount.

- **Lack of Process to Document Ex Parte Communication**

JEA DPRs had no established process (i.e. no statement on record either verbal or written) to document the existence or lack of any ex parte communication, which was strictly prohibited by the JEA ITN #127-19 Section 2.11 (*Designated Procurement Representatives and Limit on Communications*), the JEA ITN #127-19 Addendums 2 and 3, and the JEA Procurement Code (Revised 2015) Article 1-110

RECOMMENDED CORRECTIVE ACTIONS

The OIG recommends the following corrective actions:

RECORDS REVIEW

- (1) Establish or incorporate into existing policies a standard to ensure JEA policies and procedures are consistently formally documented as approved upon adoption or update. Provide the OIG with a copy of any newly established or revised policy or procedure.

SECTION I: Solicitation Phase

- (2) Establish or incorporate into existing policies a comprehensive checklist for all required administrative actions (i.e. checking Replies against the Convicted Vendor List) contained within a specific ITN document and ensure a periodic internal compliance review that the actions are appropriately documented as having been completed and are up to date. Provide the OIG with a copy of any newly established or revised policy or procedure.

SECTION II: Evaluation Phase

- (3) Establish or incorporate into existing policies a requirement that a formal Acknowledgement of Confidentiality document be created specifically for the Evaluation Committee members and require it to be signed upon appointment to the team. Provide the OIG with a copy of any newly established or revised policy or procedure.
- (4) Establish or incorporate into existing policies a process to outline where Replies should be secured, who has access to them, how access will be documented and how the evaluation results will be returned. Include in the policy and/or procedure:
 - Replies that are deemed confidential are not to be removed from a secure room or location within the JEA facility, unless there is a documented exception;
 - Replies should be prohibited from being saved to or copied to any non-JEA computer drive, desktop or any removable storage device;
 - Evaluation Committee members should complete evaluations within the JEA offices; and
 - Access to Replies should be documented providing the name of the individual accessing them, the reason for the access, date, time and duration.

Provide the OIG with a copy of any newly established or revised policy or procedure.

- (5) Establish or incorporate into existing policies a requirement to consistently use a dedicated and secure mailbox for e-mails and any related correspondence, when a dedicated mailbox is set up for the specific procurement process. Provide the OIG with a copy of any newly established or revised policy or procedure.
- (6) Establish a written policy and/or procedure to ensure that conflicts of interest between the Evaluation Committee members and the Respondents be thoroughly vetted once the names of the Respondents are known to the team members. Include in this policy and/or procedure a method to adequately review and capture, in writing, these conflicts, real or perceived, to maintain the integrity of the process. Provide the OIG with a copy of any newly established or revised policy or procedure.
- (7) Establish a written policy and/or procedure requiring a log for communications and meetings between SMEs and Evaluation Committee members to be maintained up to date as the communications and meetings occur. Include in the log the:

- date,
- originator of the request,
- name of the DPR used,
- evaluator name,
- SME name,
- topic,
- start/end time, and
- location or venue.

Provide the OIG with a copy of any newly established or revised policy or procedure.

- (8) Establish a written policy and/or procedure requiring a log for communications between DPRs and Respondents be maintained up to date as the communications occur, if not using a dedicated mailbox to retain communications. Include in the log the:
- date,
 - originator of the communication,
 - Respondent Name and firm,
 - phone call or e-mail,
 - time of communication, and
 - topic.

Provide the OIG with a copy of any newly established or revised policy or procedure.

SECTION III: Negotiation Phase

- (9) Review and update negotiation training within the JEA *Operational Procedures (Revised June of 2017)* to document specifically that decisions, as deemed appropriate, made between negotiators and SMEs are to be clearly discussed at a recorded negotiation strategy session to provide transparency for public record. Review and determine if some of the language used in the Negotiator training document (*Negotiation Instructions, JEA ITN #127-19 for Strategic Alternatives Memo*, dated November 6, 2019), created by attorney advisors, which provides detailed actions of the Negotiation Team should be incorporated into the JEA negotiation training. Provide the OIG with a copy of any newly established or revised policy or procedure.
- (10) Establish a written policy and/or procedure requiring a log for communications and meetings between SMEs and Negotiation Team members to be maintained up to date as the communications and meeting occur. Include in the log the:
- date,
 - originator of the request,
 - name of the DPR used,
 - negotiator name,
 - SME name,
 - topic,
 - start/end time, and
 - location or venue.

Provide the OIG with a copy of any newly established or revised policy or procedure.

- (11) Review and update the JEA *Operational Procedures* (Revised June of 2017) to require a statement of record, either verbal or written, be used at each negotiation strategy session and each negotiation session to formally capture statements that no ex parte communication occurred. Provide the OIG with a copy of any newly established or revised policy or procedure.

MANAGEMENT'S RESPONSE AND CORRECTIVE ACTIONS

On August 31, 2020, the Interim Managing Director and Chief Executive Officer, JEA, was provided the opportunity to submit a written explanation or rebuttal to the findings in the draft Contract Oversight Review due on or before September 21, 2020.

On September 21, 2020, a written response was received from the Interim Chief Compliance Officer, JEA. The response is attached in its entirety to this report. JEA advised that JEA has issued a Request for Proposal (RFP) to review policies and procedures for transparency and public procurement best practices. OIG confirmed that the RFP was issued on August 11, 2020. JEA agreed to incorporate all of OIG's recommendations into this review.

In part, JEA advised they are currently in the process of updating processes and procedures related to the JEA *Procurement Code* and JEA *Operational Procedures*, to include documentation of all updates and adoptions. In addition, as of September 14, 2020, a cloud-based solution for online sourcing was implemented. This new online sourcing will allow bidders to submit bids to a secure online location and evaluations will be completed and stored in this system. All solicitation documents, addendum, responses, and communication will flow through this system. As part of this overall updating of procurement process and procedures, JEA will be strengthening internal controls regarding conflict of interest vetting for Evaluation Committee members. Overall training for both Evaluation and Negotiation Team members will be incorporated into the JEA *Operational Procedures*. The JEA *Operational Procedures* will also include updated processes to track communications with SMEs.

Attachment:

1 – JEA Management Response, dated September 21, 2020

cc: IG Distribution 2020-10-0004



September 21, 2020

Ms. Lisa A. Green
Inspector General
Office of Inspector General, City of Jacksonville
231 E. Forsyth Street, Suite 470
Jacksonville, FL 32202

Subject: JEA's Management Response Pursuant to OIG Contract Oversight Review 2020-10-0004

Dear Ms. Green:

We are herein providing our management response to your DRAFT Contract Oversight Review dated August 31, 2020, which includes the details of our corrective action plan, and its status.

Please note that most of these items require updates to our current processes and procedures established in the JEA Procurement Code ("P-Code") and Operational Procedures. It should be noted that JEA issued a Request for Proposal to review those policies and procedures for transparency and public procurement best practices, with proposed recommendations to the CEO by the end of October 2020. Proposals have been received and are currently being evaluated. Those recommendations will then be incorporated into the P-Code, with a subsequent update to the JEA Operational Procedures performed by Procurement and the Office of General Counsel.

The corrective action items, as noted in the Management Responses below, will be included in the overall update to produce final documents to cover both efforts. Please note that the timeline to complete the items for updates to the P-Code are based on approvals being made by the current JEA leadership. In addition to updating current policies and procedures, a cloud-based sourcing portal will aid in correcting items #4, #5 and #8.

JEA anticipates completion, **on or before September 30, 2021**, of the approval and adoption of all newly established, updated or modifications to the P-Code and JEA Operational Procedures, and the cloud-based sourcing portal to go live with the subsequent completion of a new process flow. As each item is addressed, we will promptly send an update to the OIG for review if our completion can be accomplished earlier.

Recommended Corrective Actions

1. Records Review – Establish or incorporate into existing policies a standard to ensure JEA policies and procedures are consistently formally documented as approved upon adoption or update. Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

A more detailed update to the P-Code and Operational Procedures will include how the adoption will be approved. A recommendation is to create a summary memo for any and all updates to either document, which will be signed off by the CEO for the P-Code and the Chief Procurement Officer (CPO) for the Operational Procedures. The signed memo will then be included in a newly published version at the end of the updated document.

2. Solicitation Phase – Establish or incorporate into existing policies a comprehensive checklist for all required administrative actions (i.e. checking Replies against the Convicted Vendor List) contained within a specific ITN document and ensure a periodic internal compliance review that the actions are appropriately documented as having been completed and are up to date. Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

A list of actions will be inserted into a workflow for reviewing solicitations after bid submittal. The update will be added to the Operational Procedures under the Section titled "After Bids Are Received - Selection and Award" (*currently Part C, Section 7*).

3. Evaluation Phase – Establish or incorporate into existing policies a requirement that a formal Acknowledgement of Confidentiality document be created specifically for the Evaluation Committee members and require it to be signed upon appointment to the team. Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

A form will be created to incorporate into our solicitation documents for the Evaluation Team to complete prior to the bids being submitted. An update will be added to the Operational Procedures under the section titled "After Solicitation Release and Before Receipt of Bid" (*currently*

Part C, Section 6) to include the process for training the Evaluation Team.

4. Evaluation Phase – Establish or incorporate into existing policies a process to outline where Replies should be secured, who has access to them, how access will be documented and how the evaluation results will be returned. Include in the policy or procedure:
 - Replies that are deemed confidential are not to be removed from a secure room or location within the JEA facility, unless there is a documented exception;
 - Replies should be prohibited from being saved to or copied to any non-JEA computer drive, desktop or any removable storage device;
 - Evaluation Committee members should complete evaluations within the JEA offices; and
 - Access to Replies should be documented providing the name of the individual accessing them, the reason for the access, date, time and duration.

Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

A cloud-based solution for online sourcing, known as Zycus, is currently being implemented. This will allow bidders to submit bids online to a secured location that only JEA Procurement, along with only those designated by the Procurement staff, will have access to view and evaluate. All of the evaluations will be completed and stored in this system, alleviating the need to email or hand-deliver submittals from the vendors. Zycus went live on September 14, 2020, but there is still a need for internal and external training to be completed, along with change management and new process flows to be developed.

5. Evaluation Phase – Establish or incorporate into existing policies a requirement to consistently use a dedicated and secure mailbox for e-mails and any related correspondence, when a dedicated mailbox is set up for the specific procurement process. Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

All solicitation documents, addendum, responses, and communication will flow through Zycus, a new cloud-based system as described in our response to item #4.

6. Evaluation Phase – Establish a written policy and/or procedure to ensure that conflicts of interest between the Evaluation Committee members and the Respondents be thoroughly vetted once the names of the Respondents are known to the team members. Include in this policy and/or procedure a method to adequately review and capture, in writing, these conflicts, real or perceived, to maintain the integrity of the process. Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

A form will be created and incorporated into our solicitation documents for the Evaluation Team to complete after bids are submitted. If a conflict arises, a new Evaluation Team member will be appointed to replace the one with a conflict, after appropriate vetting. The update will be added to the Operational Procedures under the Section titled, "After Bids Are Received - Selection and Award" (*currently Part C, Section 7*).

7. Evaluation Phase – Establish a written policy and/or procedure requiring a log for communications and meetings between SMEs and Evaluation Committee members to be maintained up to date as the communications and meetings occur. Include in the log the:

- Date;
- Originator of the request;
- Name of the DPR used;
- Evaluator Name;
- SME Name;
- Topic;
- Start/End Time; and
- Location or venue.

Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

An update will be added to the Operational Procedures under the section titled "After Solicitation Release and Before Receipt of Bid" (*currently Part C, Section 6*) to include the process for training the Evaluation Team, which will include the use of SMEs. A spreadsheet, to be used when needed to address the above information, will be included in the Procurement solicitation document templates.

8. Evaluation Phase – Establish a written policy and/or procedure requiring a log for communications between DPRs and Respondents be maintained up to date as the communications occur, if not using a dedicated mailbox to retain communications. Include in the log the:

- Date;
- Originator of the communication;
- Respondent Name and Firm;
- Phone Call or e-mail;
- Time of Communication; and
- Topic.

Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

All solicitation documents, addendum, responses, and communication will flow through Zycus, a new cloud-based system as described in our response to item #4.

9. Negotiation Phase – Review and update negotiation training within the *JEA Operational Procedures (Updated June of 2017)* to document specifically that decisions, as deemed appropriate, made between negotiators and SMEs are to be clearly discussed as a recorded negotiation strategy session to provide transparency for public record. Review and determine if some of the language used in the Negotiator training document (*Negotiation Instructions, JEA ITN #127-19 for Strategic Initiatives* Memo, dated November 6, 2019), created by attorney advisors, which provides detailed actions of the Negotiation Team should be incorporated into the JEA negotiation training. Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

Management will review those training materials provided by the attorney advisors, and incorporate them into the Operational Procedures where appropriate.

10. Negotiation Phase - Establish a written policy and/or procedure requiring a log for communications and meetings between SMEs and Negotiation Team members to be maintained up to date as the communications and meeting occur. Include in the log the:

Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

An update will be added to the Operational Procedures, under the section titled, "After Solicitation Release and Before Receipt of Bid" (*currently Part C, Section 6*), to include the process for training the negotiation team, which will include the use of SMEs. A spreadsheet, to be used when needed to address the information stated in item #7, will be included in the Procurement solicitation document templates.

11. Negotiation Phase – Review and update the JEA *Operational Procedures (Updated June of 2017)* to require a statement of record, either verbal or written, be used at each negotiation strategy session and each negotiation session and each negotiation session to formally capture statements that no ex parte communication occurred. Provide the OIG with a copy of any newly established or revised policy or procedure.

Management's Response

An update will be made to incorporate this step into the Operational Procedures within all appropriate sections.

Please contact me if you need additional information regarding our corrective action plan.

Sincerely,



Steven V. Tuten
Interim Chief Compliance Officer
JEA
21 W. Church Street, T16
Jacksonville, 32202
(904) 665-5206

Cc: Mr. Paul McElroy, Interim Chief Executive Officer & Managing Director
Ms. Jody Brooks, Chief Legal Officer