



JEFFERSON PARISH LOUISIANA

OFFICE OF THE PARISH ATTORNEY

Our Mission Is:
"Provide the services,
leadership, and vision to
improve the quality of life
in Jefferson Parish."

STEVE J. THERIOT
PARISH PRESIDENT

September 14, 2010

PEGGY O. BARTON,
INTERIM PARISH ATTORNEY

LOUIS G. GRUNTZ, JR.
DEPUTY PARISH ATTORNEY

Ms. Margie Seemann
1712 N. Arnoult Rd.
Metairie, La. 70001

Re : RFP No. 176

Dear Ms. Seemann:

As a follow up to your request made at the September 1, 2010 Jefferson Parish Council meeting, I provide you with the following information. After reviewing the provisions of Jefferson Parish Code of Ordinances Section 2-895, the evaluation committee for RFP 176 should have included a representative from the Purchasing Department. However, the fact that there was no such representative on the committee would not in and of itself be grounds to make the subsequent contract, which resulted from the RFP process, illegal or invalid.

It should first be noted that the evaluation committee does not award any contracts; it merely advises the Jefferson Parish Council, which is then free to award as it deems best for Jefferson Parish, regardless of what the committee recommends. Section 2-895(6) provides:

Award: The Jefferson Parish Council shall review the memorandum from the evaluation committee and either adopt a resolution selecting a firm(s) to perform the services or reject all proposals.

An advisory committee is just that; it provides advice to another body which is then free to follow or ignore those recommendations. See New Iberia Bancorp, Inc. v. Schwing 664 So.2d 784 (La. App. 3rd Cir. 1995). It should also be noted that, unless there is a specific prohibition, governmental bodies may waive informalities in the process of awarding contracts and it does not render the subsequent contract invalid. Jefferson Parish did reserve the right to waive informalities in RFP 176. Attorney General Opinion No. 09-0188 recently stated:

Further, the "Instruction for Proposers" indicates that the Board reserved the right to take under advisement, reject any and all proposals, and waive any informalities. Although such language is prohibited under Louisiana's Public Bid Law, we believe such language is acceptable in the selection of an official journal to which the Public Bid Law does not apply.

Similarly, the Public Bid Law does not apply to the RFP in question, RFP No. 176. In Browning-Ferris, Inc. v. City of Monroe, 465 So.2d 882 (La. App. 2nd. Cir. 1985), the court held that a contract between the City of Monroe and American Waste and Pollution Control Company ("AWP") for the operation and maintenance of a facility as a sanitary landfill, at AWP's sole cost and expense (including construction costs and other items necessary for the operation of a sanitary landfill), was not a "public work" within the meaning of Public Bid Law. The court characterized the contract as one for services whereby the City of Monroe had the non-exclusive right to deposit its garbage at the landfill. In response to the contention that the landfill excavation was a "public work," the court noted that the sanitary landfill was to be owned by a private organization rather than a public entity and therefore not subject to the Public Bid Law. See also Attorney General Opinion No. 96-440.

As can be seen from the attached letter from the RFP evaluation committee, the composition of the committee was disclosed to the Council before they voted on the matter. Any inconsistency in the make up of the committee would have been cured by the Council action both because they are the only authority empowered to act on awarding a contract, and also because the Parish did reserve in the RFP the right to waive informalities.

The make-up of the committee for RFP No. 176 was set forth in an e-mail from then CAO Tim Whitmer as follows:

From: TAWhitmer
Sent: Thursday, October 09, 2008 7:42 AM
To: MWinter; RTPoole
Cc: GBolotte; PLassalle; TWilkinson
Subject: RE: RFP - Alternative Woody Waste

The committee will be:
Tom Wilkinson
David Fos
Alan Gandolfi
Marnie will administer the committee as we did with the solid waste collection contract.

Thanks

Timothy A. Whitmer
Jefferson Parish
Chief Administrative Officer
1221 Elmwood Park Blvd.
Suite 1002
Jefferson, La. 70123
Phone (504) 736-6403
Fax (504) 736-6638
e-mail:timwhitmer@jeffparish.net

Section 2-895 (5) of the Code of Ordinances provides:

Evaluation: Proposals received are evaluated by an evaluation committee, consisting of representative(s) from the requesting department(s), research and budget, purchasing department and legal. If deemed necessary by the parish president or the Jefferson Parish Council, any other persons employed by Jefferson Parish may be appointed as additional members of the evaluation committee.

Thus, the fact that the administration chose to add an additional member is permitted. The fact that Purchasing was omitted is not permitted. The Environmental Department was actively involved with the committee, although not in a voting capacity. Variations from the normal criteria are contemplated in the RFP process. Section 2-895 (3) provides:

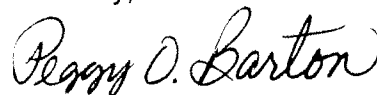
Any departure from the established plan which is prompted by factors outside the system is permitted only insofar as the same treatment is extended impartially to all offerors.

Because the same committee composition reviewed both offers, all offerors received the same treatment in this RFP, even though Purchasing was not on the committee, and the Environmental Department did not have a voting capacity. Thus, under the Code provision cited above, the departure from normal practice was permitted.

Additionally, it should be noted that, even assuming that Purchasing and the Environmental Department should have been voting members of the committee, the members who actually scored the proposals did constitute a quorum, and thus the scoring they gave was acceptable. The Code sections establishing the RFP process are silent as to a quorum. However, when there is nothing specific in the rules established for a governmental body, reference is made to Roberts Rules of Order. See Section 2-33 of the Code of Ordinances which specifically adopts Roberts Rules of Order for the Council. The RFP evaluation committee is a Council created committee. Therefore, Roberts Rules provides that most business is adopted by a majority of members who are voting; i.e., a quorum. The evaluation committee in this scenario consisted of at most five (5) people, assuming that Purchasing and the Environmental Department were to be scoring members (the 4 representatives from the code plus the 1 added administratively). Three (3) votes were needed to constitute a quorum which was the number of committee members that actually scored the proposals.

For the reasons cited above, it is the opinion of this office that, even though the composition of the RFP evaluation committee may have been flawed, that reason standing alone is not sufficient grounds to nullify the subsequently awarded contract. Moreover, as stated previously, the evaluation committee does not award contracts, it merely advises the Jefferson Parish Council. Any subsequent acts by the Council cured any defects that may have existed in the composition of the evaluation committee.

Sincerely,



Peggy O. Barton

Interim Parish Attorney

cc: Hon. John F. Young, Jr. Council Chairman
Hon. Thomas J. Capella, Council at Large, B
Hon. Chris Roberts, Council, Dist. 1
Hon. Elton Lagasse, Council Dist. 2
Hon. Byron Lee, Council Dist. 3
Hon. Louis Congemi, Council, Dist. 4
Hon. Cynthia Lee Sheng, Council Dist. 5
Mr. Steve J. Theriot, Parish President
Mr. Jose Gonzalez, COO



AARON F. BROUSSARD
PARISH PRESIDENT

JEFFERSON PARISH LOUISIANA

OFFICE OF THE PARISH ATTORNEY

December 22, 2008

TC
Our Mission is:
"Provide the services,
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in Jefferson Parish."

THOMAS G. WILKINSON
PARISH ATTORNEY

LOUIS G. GRUNTZ, JR.
DEPUTY PARISH ATTORNEY

PEGGY O. BARTON
DEPUTY PARISH ATTORNEY

Hon. John F. Young, Jr., Chairman
Jefferson Parish Council
General Government Building, Suite 6200
Gretna, LA 70053

Re: RFP No. 176 Woody Waste Disposal

Dear Chairman Young:

The RFP Evaluation Committee for RFP 0176 met on December 16, 2008. The Committee members were Alan Gandolfi, David Fos and Tom Wilkinson. The purpose of the meeting was to review the submittals received, to determine the ability of the firms to provide woody waste and other disposal for the Parish.

Two (2) firms submitted responsive proposals: Concrete Busters of Louisiana, Inc. and Riverbirch Incorporated.

The evaluation was based on the following:

- | | |
|---|------------------|
| 1. Cost of Service and/or savings to Parish | 50 points |
| 2. Technical Capabilities | 25 points |
| 3. Qualifications | 15 points |
| 4. Financial Status | <u>10 points</u> |
| | 100 total points |

The scores were:

- | | |
|---------------------|---------|
| 1. Riverbirch | 274/300 |
| 2. Concrete Busters | 143/300 |

Sincerely,

Thomas G. Wilkinson
Parish Attorney
Secretary, Evaluation Committee
RFP No. 0176

cc: Marnie Winter
Patricia Lassalle

On motion of **Mr. Lee**, seconded by **Mr. Capella**, the following resolution was offered:

RESOLUTION NO. 111491

A resolution selecting a firm to provide woody waste and other disposal for the Environmental Department under RFP No. 0176. (Parish wide)

WHEREAS, Jefferson Parish wishes to retain the services of a firm to provide woody waste and other disposal for the Environmental Department under RFP No. 0176; and,

WHEREAS, The responses to the RFP were received on December 9, 2008; and,

WHEREAS, The evaluation committee met on December 16, 2008.

NOW, THEREFORE, BE IT RESOLVED by the Jefferson Parish Council of Jefferson Parish, Louisiana:

SECTION 1: That the Council does hereby select **Riverbirch** to provide woody waste and other disposal for the Environmental Department under RFP No. 0176;

SECTION 2: That the Administration shall negotiate a contract with Riverbirch, and said contract shall be submitted to the Council in complete form, including all terms and conditions, for ratification by Council Resolution prior to execution of said contract.

The resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: 7

NAYS: None

ABSENT: None

The resolution was declared to be adopted this the 14th day of January, 2009.

THE FOREGOING IS CERTIFIED
TO BE A TRUE & CORRECT COPY



EULA A. LOPEZ
PARISH CLERK

JEFFERSON PARISH COUNCIL