
From: Miller, Carla
Sent: Wednesday, January 15, 2020 2:32 PM
To: CM; SS
Cc: Hodges, Lawsikia; Gabriel, Jason; Gavin, Kyle
Subject: JEA ITN Bid amounts/Public records discussion

Dear Council Member,

I believe it is my job to increase transparency in the JEA ITN process and to share with you information that I have learned from the previously confidential negotiation meetings. That is why I sent you my notes of the JEA negotiation meetings held prior to the ITN being withdrawn.

I have recently prepared a spreadsheet on the final offers from each of the bidders in the ITN process. This includes the gross and net amounts of the bids.

Before I sent it to you, I sent it to OGC for review since some of the bidders are objecting to the release of bid information as “confidential”. I do not believe the final amount of the bid is confidential under Florida law. That doesn’t make sense to me. If the issue had ultimately come to the Council for a vote, you would have had to have known the amount of the bid—the final number—and how it was determined.

Obviously, I don’t get to make the final determination on this and I will continue to work with OGC on getting the information out to you. OGC has the same interest in making the documents available and they are the ones talking to the Bidders.

Below is the series of emails on this issue, to give you a flavor of where we are at.

It is most important as CM Boylan continues his workshops and the investigative committee moves forward, that these public record issues be resolved.

Best,
Carla

Carla Miller
Director, ECO
Ethics, Compliance and Oversight
(904) 255-5507 Hotline (904) 630-1015

(Read from bottom up...)

From: Miller, Carla
Sent: Wednesday, January 15, 2020 12:46 PM
To: Gavin, Kyle
Cc: Hodges, Lawsikia; Davis, Julia; Feiser, Craig
Subject: RE: ITN BID Amounts

Hello,

I understand that sending the complete spreadsheet to all bidders would disclose everyone’s information before they had a chance to object.

But I believe many will not object, and I would like to release those numbers.

So I amend my request to only ask each separate bidder if they claim confidentiality as to:

Their company name; if bid was for water/electric/both; amount of gross and net bid amounts. And, it's probably good to send them the one line of my spreadsheet that applies to that company.

I still cannot imagine that the end bid amount could be held to be exempt from public records as a trade secret. If any of them had the winning bid, or if several bids had been presented to Council, as requested by the Mayor, surely the amount of the bid and how it was determined would be public information and dissected in detail. In any event, I realize that my opinion is not determinative and it may need to be litigated.

Let's see which bidders will disclose this basic information.

And, I would specifically ask for the transcript of the Dec. 3, 2019 negotiation strategy meeting, with its related document analyzing all of the bids, be sent to the Respondents/Bidders, if it hasn't been already, with a short time line for making any exemption claims.

That document and transcript is key for the City Council to have an understanding of the ITN process and should be singled out and expedited for release.

Thanks,
Carla

From: Gavin, Kyle
Sent: Tuesday, January 14, 2020 5:09 PM
To: Miller, Carla
Cc: Hodges, Lawsikia; Davis, Julia; Feiser, Craig
Subject: RE: ITN BID Amounts

Carla,

I cannot provide a copy of your spreadsheet for the bidders to review because it will necessarily disclose the bids to other competitors. At this point, we should not disclose information that was redacted by the bidders or gleaned from the private bidder meetings until they have reviewed the transcripts and designated any exempt information. Any information from the bidder replies that was not redacted is already public and may be disclosed. Some bidders consider their bid amounts (including whether they only bid on a portion) to be trade secrets and confidential proprietary business information. Presumably, JEA could resume negotiations at some point in the future. Disclosing trade secret or proprietary confidential information in their bids to competitors may give such competitors an advantage if negotiations resume. The First DCA held that a valid trade secret claim to information in a bidder submittal survives the award. Moreover, the ITN states that redacted information will not be disclosed and that the requestor and bidder will be given the opportunity to resolve the exemption claim. I can find no Florida case directly on point whether a bid amount is a trade secret or proprietary confidential information under these circumstances. However, a Florida trial court ordered, without discussion, that specifications and pricing analysis were trade secrets. Accordingly, we should not arbitrarily determine that redacted information is not a trade secret or proprietary confidential information.

As you know, the Florida Legislature declared that preserving the trade secrets of persons doing business with the government is a public necessity, the violation of which is a felony, even in the public records context. Accordingly, we should not, at this time, release information redacted by the bidders in their respective submittals to JEA. I will let you know if/when this changes. The bidders' exemption claims may have to be litigated prior to disclosure in order to avoid a violation of Florida law. Please let me know if you have any questions. Thanks,

Kyle

From: Miller, Carla <CarlaM@coj.net>
Sent: Monday, January 13, 2020 1:06 PM
To: Gavin, Kyle <KGavin@coj.net>
Cc: Hodges, Lawsikia <LHodges@coj.net>
Subject: ITN BID Amounts

Hi Kyle,

Attached is a short spreadsheet based on my notes from the December ITN meetings that I intend to release this week. It lists each of the Companies/Bidders, whether their bid included water/electric or both; and the gross and net values of their bids.

I would have thought by now that this information would be out there, maybe it is, but this is a quick way to get the info to City Council.

Since it is so short, it should not take the Respondents that long to decide if they want to assert any confidentiality claims on the monetary amount of their bid.

Please let me know by Wednesday at 5pm (or before) if there are any valid claims of confidentiality. I do not see how the actual amount of the bid is confidential under Florida law.

Thank you,
Carla

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