

**MARYLAND-NATIONAL CAPITAL PARK & PLANNING
COMMISSION**

**Department of Finance
Purchasing Division**

**Competitive Bid Waivers
Report Number: CW-003-2019**

December 27, 2018

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**Department of Finance
Purchasing Division**

**Competitive Bid Waivers
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I. EXECUTIVE SUMMARY

A. Overall Perspective

The Central Purchasing Division, within the Department of Finance, processes and administers procurements with competitive bid waivers. Commission Practice No. 4-10, *Purchasing Policy*, along with the Administrative Procedures contained in the *Purchasing Manual*, include requirements and criteria for requesting procurements with competitive bid waivers.

All waivers of competition for purchases greater than \$10,000 require approval of the Executive Director. These procurements must have a Waiver of Quotation and/or Bid Procedures Form (Form). A written justification memo must be attached to the Form. One of the following four reasons must be checked on the Form as the reason for the waiver; emergency, required by law or grant, amendment, or sole source. The reasons are defined as:

Emergency – Sudden and/or unforeseeable circumstances have arisen which actually or imminently threaten the continuance of an essential operation of the Commission or which threaten public health, welfare or safety such that there is not enough time to conduct competitive bidding.

Required by Law or Grant – Public Law or the terms of a donation/grant require that the above noted vendor be chosen.

Amendment – A contract is already in place and it is appropriate for the noted vendor to provide additional services and/or goods not within the original scope of the contract because the interested service and/or goods are uniquely compatible with the Commission's existing systems and patently superior in quality and/or capability than what can be gained through an open bidding process.

Sole Source – It has been determined that:

1. The vendor's knowledge and experience with the Commission's existing equipment and/or systems offer a greater advantage in quality and/or cost to the Commission than the cost savings possible through competitive bidding, or
2. The Interested services or goods need to remain confidential to protect the Commission's security, court proceedings and/or contractual commitments, or
3. The services or goods have no comparable and the above noted vendor is the only distributor for the interested manufacturer or there is otherwise only one source available for the sought-after services or goods, e.g. software maintenance, copyrighted materials, or otherwise legally protected goods or services.

B. Audit Scope, Objectives, and Methodology

The objective of the audit was to evaluate the system of internal controls for the approval of competitive procurement waivers and to ensure compliance with Commission policies and procedures.

In addition, the audit scope was designed to identify possible fraud, waste, or abuse with the process(es) audited.

The scope of our audit included but was not limited to, the following audit procedures:

- Reviewed relevant Commission practices and procedures;
- Determined the universe of procurements based on waivers of competitive bid procedures (117 waivers totaling over \$6.6m);
- Judgmentally selected 25 procurements, totaling over \$2.5m for review; and
- Reviewed supporting documentation, including waiver of competition request forms and written justification memos provided to the Executive Director.

The audit was conducted in accordance with the *U.S. Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the established audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit covered the period from January 1, 2016 – October 31, 2018.

C. Major Audit Concerns

The results of our evaluation and testing procedures indicated no major audit concerns.

Note: Although this was an audit of the Department of Finance, Purchasing Division, the OIG identified additional opportunities for improvement at the Department level. **Exhibit A** contains a copy of a memorandum issued to Department management on December 6, 2018 regarding emergency waivers.

D. Overall Conclusions

The results of our evaluation and testing procedures indicate no major weaknesses in the design or operation of internal controls for Competitive Bid Waivers. On an overall basis, we consider the controls to be satisfactory, see definition below.

We believe all weaknesses identified and communicated are correctable and that management's responses to the recommendations satisfactorily address the concerns. It is the responsibility of management to weigh possible additional cost of implementing our recommendations in terms of benefits to be derived and the relative risks involved.

We wish to express our appreciation to the Purchasing Division and the Executive Director's Office management and staff for the cooperation and courtesies extended during this review.



Robert Feeley, MBA, CFE, CAA, CGFM, CICA
Assistant Inspector General



Renee M. Kenney, CPA, CIG, CIA, CISA
Inspector General

December 27, 2018

Conclusion Definitions

Satisfactory	No major weaknesses were identified in the design or operation of internal control procedures.
Deficiency	A deficiency in the design or operation of an internal control procedure(s) that could adversely affect an operating unit's ability to safeguard assets, comply with laws and regulations, and ensure transactions are properly executed and recorded on a timely basis.
Significant Deficiency	A deficiency in the design or operation of an internal control procedure(s) which adversely affects an operating unit's ability to safeguard assets, comply with laws and regulations, and ensure transactions are properly executed and reported. This deficiency is less severe than a material weakness, yet important enough to merit attention by management.
Material Weakness	A deficiency in the design or operation of an internal control procedure(s) which may result in a material misstatement of the Commission's financial statements or material impact to the Commission.

II. DETAILED COMMENTARY AND RECOMMENDATIONS

1. Strengthen Records Management

Issue: Waiver of Quotation and/or Bid Procedures Forms (along with Written Justification Memo's) to justify and support competitive bid waivers are not adequately tracked. Only the original and hard copies are retained.

Criteria/Risk: Commission Practice No. 4-10 Purchasing Policy and the Administrative Procedures within the *Purchasing Manual* state procurements with competitive bid waivers must have a Waiver of Quotation and/or Bid Procedures Form approved by the Executive Director and a Written Justification Memo attached. If an original and copy of these are lost or misplaced and cannot be located, there is no electronic documentation available to support the competitive bid waiver.

Recommendation: We recommend that the Purchasing Division and/or the Executive Director's Office retain an electronic copy of the Waiver of Quotation and/or Bid Procedures Form along with the Justification Memo for each procurement that has a competitive bid waiver to ensure sufficient records are maintained with the required supporting documentation.

Issue Risk: Medium

Management Response: We concur with the recommendation and have modified our procedures to maintain electronic copies of all waiver requests and back-up documentation in the Central Purchasing Division.

Expected Completion Date: Implemented Immediately.

Follow-Up Date: March 2019

Exhibit A
Note to Department Heads



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
Office of the Inspector General • 7833 Walker Drive, Suite 425 • Greenbelt, Maryland 20770

December 6, 2018

To: Darin Conforti, Acting Director, Prince George's County Department of Parks and Recreation

Roslyn Johnson, Deputy Director, Facility Operations

Debbie Tyner, Deputy Director, Area Operations

Mike Riley, Director Montgomery County Department of Parks

Mitra Pedoeem, Deputy Director, Administration

John Nissel, Deputy Director, Operations

From: Renee Kenney, Inspector General

Robert Feeley, Assistant Inspector General

Subject: Competitive Bid Waivers

Mr. Robert Feeley, Asst. Inspector General, is completing an audit of Competitive Bid Waivers. We will be issuing a final audit report to the Department of Finance. However, during the completion of our audit testing, we identified an issue that warrants notification/communication with department management, specifically management responsible for oversight of conditions at Commission facility sites. This does not appear to be a Finance or Purchasing issue.

All waivers of competition for purchases valued in excess of \$10,000 require approval of the Executive Director. These procurements must have an approved Waiver of Quotation and /or Bid Procedures Form (Form). A written justification memo must be attached to the Form. One of the following four reasons must be checked on the Form as the reason for the waiver; Emergency, Required by Law or Grant, Amendment, or Sole Source. The reasons are defined as:

Exhibit A
Note to Department Heads

Emergency – Sudden and/or unforeseeable circumstances have arisen which actually or imminently threaten the continuance of an essential operation of the Commission or which threaten public health, welfare or safety such that there is not enough time to conduct competitive bidding.

Required by Law or Grant – Public Law or the terms of a donation/grant require that the above noted vendor be chosen.

Amendment – A contract is already in place and it is appropriate for the noted vendor to provide additional services and/or goods not within the original scope of the contract because the interested service and/or goods are uniquely compatible with the Commission’s existing systems and patently superior in quality and/or capability than what can be gained through an open bidding process.

Sole Source – It has been determined that:

4. The vendor’s knowledge and experience with the Commission’s existing equipment and/or systems offer a greater advantage in quality and/or cost to the Commission than the cost savings possible through competitive bidding, or
5. The Interested services or goods need to remain confidential to protect the Commission’s security, court proceedings and/or contractual commitments, or
6. The services or goods have no comparable and the above noted vendor is the only distributor for the interested manufacturer or there is otherwise only one source available for the sought-after services or goods, e.g. software maintenance, copyrighted materials, or otherwise legally protected goods or services.

During the audit, the Office of the Inspector General (OIG) asked Purchasing to run a report of competitive bid waivers processed from January 1, 2016 through October 31, 2018. A report showing 117 waivers totaling over \$6.6m was provided. A judgmental selection was made, resulting in 25 waivers, totaling over \$2.5 mil. for review. During our review of the sample procurements, the OIG identified three (3) procurements with questionable waiver justifications:

	Date	Department	Vendor	Amount	Waiver Type
1	10/26/17	PGC Dept. of Parks and Rec.	Golf Design Group	\$ 34,976	Emergency
2	6/14/18	MC Dept. of Parks	Worcester Eisenbrandt, Inc.	151,146	Emergency
3	5/26/17	PGC Dept. of Parks and Rec.	Daktronics	315,854	Sole Source

Exhibit A
Note to Department Heads

- 1) Emergency approval was requested to provide custom golf netting at the Paint Branch Golf Course. The current netting was in need of repair, and golf balls were going through the netting onto the road.

OIG Comment: At the time of the request, the issue appeared to be an emergency. However, it is reasonable to conclude that the disrepair was not sudden or due to unforeseeable circumstances. At the time of the waiver approval, Ms. Patricia Barney, Executive Director stated, “I approved this waiver but would like the Department to set up a process to prevent a similar situation in the future. How is it we don’t know that netting is getting worn?”

- 2) Emergency approval was requested to waive the quotation and bid procedures so that emergency structural repairs could be made for a historic asset of the Commission.

OIG Comment: At the time of the request, the issue appeared to be an emergency. However, it is reasonable to conclude that the structural damage was not sudden or due to unforeseeable circumstances. On November 30, 2017, approximately 5 ½ months prior to the request for waiver, the vendor (Worcester Eisenbrandt, Inc.) identified wood floors that were out of level and showing indications of buckling. They also identified sections of collapsed drylaid foundation and other structural deficiencies. They also stated that their observations identified progressively worse and more dangerous conditions.

- 3) A sole source request was made for the installation of two (2) scoreboards at Prince George’s Sports and Learning Complex. The vendor (Daktronics) was the manufacturer of the scoreboards. The scoreboards were purchased under a rider Contract with The Cooperative Purchasing Network (TCPN). The award to Daktronics, Inc. under the TCPN did not provide installation services. The sole source justification memorandum stated, “using their (Daktronics) certified installers will allow for the product to be installed quicker due to their familiarity with the products and our facility.”

OIG Comment: At the time of the waiver approval, Ms. Patricia Barney, Executive Director stated, “I am approving the waiver; however, I have a major concern. I believe it may have been possible to do some form of an RFP for the installation services for certified installers...I am asking Purchasing and the P&R team to brainstorm other possible approaches for future critical equipment/systems to enable bidding.” The OIG reached out to [REDACTED], and was told that efforts to brainstorm new approaches was not completed.

These examples are being shared with Department management as the questionable justifications do not appear to be a Purchasing issue. At the time of

Exhibit A
Note to Department Heads

waiver approval, emergency conditions warranted the competitive waiver. However, the OIG is concerned that the Department's lack of monitoring or planning for facility repairs may increase the number of waiver requests. These three (3) exceptions represent 12% of the selected sample population (3/25).

This memorandum does not include a formal audit recommendation. However, it is being issued to increase awareness, and hopefully, reduce the need for future emergency waivers. It will be included in the Office of the Inspector General's final audit workpapers and will be considered during future audits of contracts and/or waivers.

Thank you.

Cc: A. Bennett
A. Gardner
S. Pearson
J. Zimmerman