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September 3, 2008

Scott Harra, Director
Department of Administrative Services
155 Cottage Street NE, U20
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Dear Mr. Harra:

We have concluded our investigation of an allegation relating to contract No. 7560 for the procurement of janitorial supplies, industrial paper and related services, administered by the State Procurement Office, Department of Administrative Services (department). In October 2007, the Audits Division received an allegation through the Government Waste Hotline that the department unfairly awarded the food supplies category of the contract. More specifically, the department allegedly allowed the winning proposer to submit an alternative price list when a dated, manufacturer's list price was designated by the Request for Proposal (RFP) as a mandatory requirement. According to the allegation, manufacturers do not publish full price lists that would be available to proposers for use in responding to a request for proposal.

The purpose of our investigation was to determine the validity of the allegation. To help make that determination, we interviewed department staff as well as a major manufacturer of food supplies. We also reviewed documentation specific to the food supplies category, including the RFP, the winning proposal, and correspondence from potential proposers.

Background

On January 17, 2007, the department posted Request for Proposal No. 102-5031-5, Janitorial Supplies, Industrial Paper, and Related Services, on the Oregon Procurement Information Network (ORPIN) website. Subsequently, the department issued six addenda to the RFP to extend the closing date and to clarify and change certain requirements of the RFP. The final RFP contained 24 categories of products available for bids. According to the RFP, the department could award to multiple proposers; thus, a proposer could bid on one or many of the product categories. The deadline for requests for clarification, and requests for changes or protests of contractual terms and specifications was February 5, 2007. Proposal submissions were due on April 4, 2007.

The RFP designated certain requirements as "mandatory" and stipulated that failure to meet a mandatory requirement would result in the disqualification of a proposer's bid. A dated, manufacturer's list price for each of the 24 product categories was one of the mandatory requirements of the RFP. In addition, proposers were required to also submit a minimum guaranteed discount from the manufacturer's list price for each item proposed and the adjusted

price (manufacturer's list price less minimum guaranteed discount).

Results

Our investigation of the award of the food supplies category of contract No. 7560 partially substantiated the allegation. Our discussions with a major manufacturer of food supplies indicated that a mandatory requirement for a dated, manufacturer's list price would be problematic for them as they do not publish a complete price list for suppliers. Instead, the manufacturer receives requests from direct distribution partners for pricing on a specific list of items, and the manufacturer provides pricing based on those requests.

Our review of correspondence from potential proposers did not disclose questions or protests regarding the requirements in the RFP for the food supplies category. However, the department received a request for modification on January 26, 2007, regarding the requirement of a manufacturer's list price in general. The request indicated that a number of manufacturers do not publish a manufacturer's list price sheet. Specific product categories cited as lacking published manufacturer's price lists included paper products, private label chemicals, and sanitary products. As a result of this request, the department amended the RFP to exclude industrial paper and sanitary products from the requirement for a dated, manufacturer's list price. For these two categories, proposers were allowed to propose the final price.

In addition, we reviewed the offers submitted and found that only one proposal was submitted for food supplies. This proposal did not include a dated, manufacturer's list price as required by the RFP, but instead, included the proposer's own distributor's price list that was accepted by the department as an appropriate price list. This proposer was subsequently awarded the food supplies category.

Oregon's procurement laws describe a "responsive proposal" as a proposal that substantially complies with the request for proposals and all prescribed procurement procedures and requirements. As described previously in the *Background* section of this letter, the RFP included a provision for disqualifying a proposer's bid that is not responsive. The department did not appear to fully comply with this provision of the RFP when it accepted the alternative price list submitted by the sole proposer instead of disqualifying the proposal as "non-responsive."

Department staff indicated that the intent behind the requirement for the manufacturer's list price was to allow the department to establish a firm basis on which to evaluate the proposers' bids. In addition, staff indicated that it was customary for manufacturers to provide price lists to suppliers for use in bidding on contracts. The staff stated they did not have reason to believe a manufacturer's price list would not be available to proposers in the food supplies category.

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We recommend department management ensure it fully complies with RFPs when evaluating proposals in relation to mandatory requirements, and consider the effect that protests in one category of a multiple product RFP might have on other product categories.

Sincerely,
OREGON AUDITS DIVISION

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