



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

December 30, 2010

The Honorable Brian Bingman
President Pro Temp Designee
Oklahoma State Senate
2300 N. Lincoln Boulevard, Room 424
Oklahoma City, Oklahoma 73105

Dear Senator Bingman:

Thank you for requesting we review the process for replacing the Lloyd E. Rader Center by the Oklahoma Office of Juvenile Affairs and the Oklahoma Department of Central Services. Attached you will find a Memorandum from Tom Bates, Chief of the Multi County Grand Jury Unit, the Unit which conducted the review. The Memorandum speaks for itself.

At this time, we see no purpose in reviewing this matter further. Thank you for your interest in this matter.

If you have any questions, please feel free to contact me at (405) 522-1863.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Gruber", is written over a horizontal line.

TOM GRUBER
FIRST ASSISTANT ATTORNEY GENERAL

TG:seh
Encl.

cc: W.A. Drew Edmondson
Attorney General

Assistant Attorney General Tom Bates
Chief of Multi County Grand Jury Unit

MEMORANDUM

TO: Tom Gruber
FROM: Tom Bates
DATE: December 29, 2010
RE: Oklahoma Office of Juvenile Affairs

Tom,

The Oklahoma Office of Juvenile Affairs (OJA) and Department of Central Services (DCS) have provided documents to this office concerning the Request for Proposal (RFP) for a new OJA treatment facility. The proposed treatment facility is intended to replace the Lloyd E. Rader Center. These documents were reviewed by Michael Wooldridge, Chief Investigator for the Multicounty Grand Jury Unit. His report has been previously provided to you. I have reviewed his report and discussed his findings with him. I have also discussed this particular RFP with Scott Schlotthauer, State Purchasing Director for DCS.

According to Mr. Schlotthauer, this RFP was conducted under DCS' Performance Information Procurement System (PIPS). This system was implemented in 2008 and is designed to identify the greatest possible value for the State of Oklahoma during the procurement process, not just the cheapest price. The primary focus of PIPS is for the State to identify the *need* and allow the suppliers to leverage their expertise in proposing the best *solution* to address the need. One of the primary benefits of the process is that all risks that may impact supplier performance or delivery are identified and a plan to address each risk is developed prior to execution of a contract award. Below is a brief overview of the PIPS process and an explanation of how this particular RFP adhered to that process.

The PIPS process is guided by a series of six (6) filters that progressively eliminate the lower performing suppliers based on the following:

Filter 1 – Past Performance:

Suppliers are tasked with collecting past performance information from previous customers. Suppliers are allowed to pick and submit their best historical evaluations with their proposal. It is expected that if the supplier is indeed an expert, it will be conveyed by past clients' assessment of their performance.

In this particular instance, all respondents were required to submit past performance information. Suppliers submitted their own references which were based on factual data. According to DCS, there is little chance of misinterpretation of reference checks.

Filter 2 – Project Capability:

The primary component of this filter is the Risk Assessment Value Add (RAVA) submission. The RAVA plans are 1) redacted, 2) limited to one page of risks and one page for value adds, 3) easily understood requiring no technical background and, 4) contain no marketing information. Suppliers are expected to minimize risks within their control (labor, supplies, equipment, etc.) and are to identify those risks outside of their control (material costs, weather, responsiveness of State, etc.) with a mitigation plan in the event the risks occur. This is a key component of the process as it clearly identifies those suppliers that can visualize the project through the point of delivery. The Value Add component allows suppliers to make cost justifiable suggestions that add value and differentiate themselves from the competition. Project capability is scored “blind” by the evaluation team.

On the OJA RFP, all respondents were, in fact, required to submit a RAVA plan. All names were removed from these documents before they were reviewed by the evaluation team. The RAVA plans were labeled vendor A, B, C, etc., and were copied. DCS then calculated the average numbers of the past performance information that had been submitted by the vendors. DCS met with the OJA evaluation team on 7/19/10, and gave each member a scoring sheet. All RAVA plans were then individually scored. At that time, the suppliers’ names and cost proposals were not known to the evaluators.

Filter 3 – Interview:

This is the first filter in which the evaluation team is aware of the identity of the supplier. Supplier representatives are interviewed individually with each interview lasting approximately 15 minutes. The individuals interviewed are those that would play a key role in delivery to the State and should be able to speak in detail to any question relative to the project or any submission provided within their proposal. There are normally three individuals named in the solicitation who are required to attend interviews.

In this particular instance, it was decided that all respondents would be interviewed. The interviews were conducted in Sand Springs at the Rader Center on July 21, 2010. At this time the evaluators learned the names of respondents, and were given a second scoring sheet to use for the interview scores. No costs were revealed to the evaluation team.

Filter 4 – Prioritize (Identify the Best Value):

At this point, all information gathered is scored to prioritize proposals and identify the best value supplier. In this case, DCS combined all RAVA, past performance information, and interview scores to prioritize proposals and identify the best value supplier. These figures were submitted to the OJA purchasing office for final review on July 27, 2010.

Filter 5 – Cost Verification:

In this filter, cost is input into the evaluation of proposals. According to DCS, the identified best value supplier should be within a set percentage of the average respondent pricing, if the best value supplier is not also the lowest cost supplier. If the best value supplier is not the low cost supplier, evaluators should be able to clearly articulate the value to the state in going with a higher cost. In this RFP process, cost was incorporated at this point to be considered with the other scored components of the submissions.

Filter 6 – Pre-Award Period:

It is at this point in the process that the State engages the identified Best Value Supplier to convey all identified risks (from the State and / or other supplier submissions) for which the supplier will create a mitigation plan for each additional risk. Also developed at this time is a weekly risk report (WRR) which is intended to identify risks as they actually occur and actions taken by the supplier to resolve the risks. These deliverables will be incorporated into the associated contract along with a delivery schedule and any technical details that need to be included. When all parties agree the contract is complete, an award is made.

On August 2, 2010 OJA notified DCS to proceed with the pre-award process with the highest ranked supplier. The first pre-award meeting was held on August 4, 2010. The pre-award meetings are meant to ensure the State's expectations are met,

and final terms, conditions, and pricing factors have been agree upon. A total of 5 pre-award meetings were held to complete negotiations and a draft contract.

Questions have been raised in this matter concerning whether the winning RFP provided the required number of secure beds to effectively replace the Rader Center. It was the opinion of DCS that the bid for a treatment center located in Ada was substantially compliant and that it could further negotiate the secure beds aspect of the project without re-opening the entire project for further bidding. Questions have also been raised about certain amendments to the RFP. It appears that those amendments were done pursuant to questions submitted by suppliers and that these questions and answers were made available to all interested persons.

In conclusion, there does not appear to be any evidence that DCS procedures were compromised or that any undue influence was exercised during the RFP process at issue. Based on my understanding of the PIPS process as outlined above, it would be very difficult for someone to manipulate the blind evaluation procedures that are in place. In this instance, the winning RFP was judged to be superior by a fairly wide margin. This judgment was shared across the board by all evaluators. The existence of an affair between a Senator and an interested lobbyist is irrelevant due to the controls present in the PIPS system. There was no evidence that the process was compromised or undue influence was exerted to justify further investigation of this matter as a potential criminal violation. As you are well aware, there are both administrative and civil court remedies available to interested vendors.

Tom Bates