

Public Investigative Report

2017 – 0031

Public Bid 50-00120070

OFFICE OF INSPECTOR GENERAL JEFFERSON PARISH



PUBLIC INVESTIGATIVE REPORT

PUBLIC BID No. 50-00120070

2017-0031

INVESTIGATION
ISSUED 3/13/2018



OFFICE OF INSPECTOR GENERAL
JEFFERSON PARISH

DAVID N. MCCLINTOCK
INSPECTOR GENERAL



DATE: 03/13/2018

TO: The Citizens of Jefferson Parish

FROM: David McClintock, Inspector General

RE: Investigative Report #2017-0031 Public Bid 50-00120070 (Landscaping)

Please find attached the Jefferson Parish Office of Inspector General's (JPOIG) Confidential Final Report of Investigation on Jefferson Parish Public Bid 50-00120070, "Provide a three (3) Year Contract for Labor, Materials, Supplies and Equipment Necessary to Provide Landscape Maintenance at the Jefferson Performing Arts Center."

The objectives of the investigation was to assess and report on:

- (1) Compliance with Jefferson Parish bid process;
- (2) Regulatory compliance with state law by Jefferson Parish and bidders; and
- (3) Jefferson Parish's bid protest process.

A Confidential Draft Report was issued on 11/14/2017 to the Parish Council, the Parish President, the Parish Attorney and the Director of Purchasing. Per Parish Ordinance §2-155.10(9), response(s) from recipients of the report was due on or before 01/03/2018.

Pursuant to JPCO 2-155.10(h), the inspector general has an affirmative duty to provide a standard of efficient practice to government and monitor implementation. The report reached two findings and made related recommendations for improvement of process to achieve greater efficiency and integrity. A response to the report, dated 11/16/2017, was submitted by the Parish Attorney on behalf of the Administration and hand-delivered nearly a month later on 12/15/2017. The response disagreed with the findings and recommendations of the JPOIG. The response concluded that the JPOIG report "lacks merit." A Confidential Final Report was delivered to the Ethics and Compliance Commission, the Administration and the Council on 02/16/2018.

In this instance, the Parish Administration and Council missed a clear opportunity to improve its process to ensure its selected vendors are responsible and demonstrate compliance with applicable state law. In doing so, the Parish demonstrated a willingness to be complicit with its selected vendors' non-compliance with state law, valuing expediency over integrity.

The report's findings, recommendations, and the Parish's response, are summarized below:

Finding #1: Parish failed to evaluate bid submission for accuracy of representation

The Parish awarded a contract to a bidder who did not possess the licenses required by the Parish in the Parish's advertised bid. The bidder failed to identify sub-contractors/non-employees as required by state law.

In this instance, the Parish published an invitation to bid on a three (3) year contract to perform landscape and maintenance. The bid advertisement required that interested bidders agree to comply with all provisions of Louisiana Law as well as be in compliance with the Jefferson Parish Code of Ordinances.

The original advertisement required “A Louisiana State Contractor License/Building Construction *and/or*” at least one of several identified Louisiana Specialty Licenses. The Parish amended the bid specifications four (4) times and extended the time for submissions. The amendments materially changed the qualifications, notably requiring bidders possess an arborist license issued by the Louisiana State Department of Agriculture and Forestry (“LDAF”).

Rotolo Consultants, Inc, (“RCI”) was the low bidder and submitted copies of licenses as required by bid advertisement, including a copy of an arborist license in the name of Mr. Strecker. The JPOIG investigation revealed that Mr. Strecker was not an employee of RCI. State regulations allow a bidder to solicit business based upon qualifications of a non-employee, but require the bidder identify the license holder as a sub-contractor. RCI failed to identify Mr. Strecker as a sub-contractor.

Based on the above, the JPOIG recommended that the Parish develop a process for evaluating representations made in bids before awarding contract to ensure that representations are truthful and meet specifications of bid invitation.

In response, the Parish maintains that the bid specifications “merely required bidders to supply the required licenses in the form of copies...” Further, the Parish maintains that “any deviation by the license holder from regulations promulgated by the licensing agency is one for the regulatory body to pursue against the license holder, and not the matter for Jefferson Parish to enforce.”

The Parish’s position is contrary to bid specifications mandating that bidders be in compliance with state law. Rotolo breached state regulations by failing to identify individual as sub-contractor and not employee. The Parish’s position would also permit any bidder to attach copies of licenses for purposes of getting an award without regard to the whether the bidder can meet contractual obligations responsibly.

Finding #2 Parish does not have adequate process for bid protests

Under the Parish Administration’s Procurement Manual (“Procurement Manual”), any unsuccessful bidder may protest an award in writing to the Director of Purchasing within 48 hours of bid opening. In this instance, there were three bidders: (1) RCI, (2) Little Computer Solutions (“LCS”) and (3) Thrive of Louisiana (“Thrive”). LCS and Thrive formally protested the bid awarded to RCI on grounds that RCI did not possess an “Arborist license” according to the LDAF as required by the bid specifications. The procurement manual fails to provide detailed process and/or procedures for fairly resolving bid protests.

Here, the protest were referred to the Parish Attorney’s Office who ultimately dismissed the protests as unmeritorious. In the response to Thrive’s protest, the Parish Attorney noted that he confirmed that employer/employee relationship with the designated license holder, in addition to confirming additional arborists on staff with RCI. The JPOIG investigation verified that RCI did

not employ a licensed arborist, but RCI intended to sub-contract work to Mr. Strecker who was a licensed arborist.

Based on the above, the JPOIG recommended that the Parish implement a robust policy to better handle and resolve disputes relating to protested bids. The Parish protest process did not require that supporting documentation be obtained to verify representations made by bidders. Thus, the conclusion reached by the Parish Attorney that protests lacked merit was based, at least in part, on unsupported and inaccurate information. RCI's bid breached La. R.S. 3:3804(C)(D) and failed to comply with Parish ordinances and applicable standards.

In response, the Parish's position is that "Louisiana Law Public Bid Law provides no mandates of policy or procedure in this regard."

During the course of JPOIG investigation, the LDAF undertook a separate investigation. Upon information and belief, RCI was informed by LDAF that RCI was required to identify any non-employee whose license is used to solicit business as a subcontractor. **The failure to identify the license holder as a subcontractor in the bid proposal is a violation of the Louisiana Horticulture Law & Rules and Regulations.**

The JPOIG, working to raise awareness to the Council of issues prior to any action, delivered the 10-page investigative report to the Parish Council at the Council meeting on which the Council was scheduled to take final action on the bid. After some discussion, the Council voted 4-3 in favor of awarding the bid to RCI despite deficiencies identified by the JPOIG.

The response later received by the JPOIG from the Parish Attorney opened by chastising the JPOIG for grammatical errors contained in the draft report and then proceeded to dismiss the substantive findings reached by the JPOIG while failing to address relevant factual findings.

Respectfully,



David McClintock

cc:

Michael S. Yenni, Parish President
Chairman Cynthia Lee-Sheng, At-Large "B"
Councilman Chris Roberts, At-Large "A"
Councilman Ricky J. Templet
Councilman Paul D. Johnston
Councilman Mark D. Spears, Jr.
Councilman Dominick Impastato
Councilwoman Jennifer Van Vrancken
Keith A. Conley, Chief Operating Officer
Michael J. Power, Parish Attorney
George Simno, Purchasing Director

JEFFERSON PARISH PUBLIC BID NO. 50-00120070

2017-0031

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OFFICE OF INSPECTOR GENERAL
JEFFERSON PARISH

DAVID N. McCLINTOCK
INSPECTOR GENERAL



Date of Report: 3/13/2018	PUBLIC INVESTIGATIVE REPORT	Case: 2017-0031
Timeframe: 09/07/2017 – 11/02/2017		Investigation By: Paul Lumpkin
<u>Subject of Investigation</u>		
<ul style="list-style-type: none"> Public Bid 50-00120070 for Landscaping work for Jefferson Performing Arts Center 		

INTRODUCTION

Pursuant to JPCO §2-155.10(11) (a), the Jefferson Parish Office of Inspector General (“JPOIG”) initiated an investigation into Jefferson Parish Bid 50-00120070, “Provide a three (3) Year Contract for Labor, Materials, Supplies and Equipment Necessary to Provide Landscape Maintenance at the Jefferson Performing Arts Center.” The investigation was precipitated by external information provided to the JPOIG.

OBJECTIVES

The JPOIG’s objectives for this investigation were to assess and report on:

- Compliance by bidders with bid specifications, technical and general,
- Regulatory compliance, and
- Jefferson Parish’s policies and procedures relating to bid protest.

SCOPE AND METHODOLOGY

To accomplish our objectives, the following was completed: Conducted interviews,

1. Reviewed bid specifications, general and specific,
2. Reviewed bids, and
3. Reviewed relevant local and state law pertaining to required licenses.

BACKGROUND

Jefferson Parish’s Purchasing Department published an invitation to bid, Bid No. 50-00120070, to “Provide a three (3) Year Contract for Labor, Materials, Supplies and Equipment Necessary to Provide Landscape Maintenance at the Jefferson Performing Arts Center.” The deadline for submitting sealed bids was originally scheduled for 08/07/2017 at 2pm. On 07/27/2017, there was a mandatory pre-bid conference held at the Jefferson Parish Performing Arts Center for interested bidders.

Subsequently, the Parish received questions regarding the bid specifications. There were four (4) addendums to the original bid invitation.

Addendum #1: Issued on 08/04/2017 - Postponing the deadline for bid submissions until

08/17/2017.

- Addendum #2: Issued on 08/14/2017 - Clarifying licenses required by bidders and revising the pricing pages, pages numbered 6 through 12.
- Addendum #3: Issued on 08/16/2017 - Revising the bid opening date to 08/29/2017, publishing questions and answers regarding bid invitation, and revising technical specifications for a second time.
- Addendum #4: Issued on 08/21/2017 - Publishing questions and answers regarding bid invitation and establishing a deadline of 08/22/2017 for all questions regarding the bid invitation.

The Parish received three bids: Little Computer Solutions (“LCS”), Rotolo Consultants, Inc. (“RCI”), and Thrive of Louisiana, LLC (“Thrive”). After bids were opened, they were evaluated for responsiveness, and the low bidder was identified. LCS’ bid was determined to be non-responsive for failing to appropriately use the required bid form which provides both unit and pricing per unit. Of the two remaining responsive bidders, RCI was determined to be the lowest responsive bidder.

On 08/31/2017, LCS protested an award to RCI on grounds that RCI was nonresponsive because it did not have the required Arborist license. On 09/7/2017, Thrive also protested an award to RCI. The protests were reviewed by the Parish Attorney and determined to be without merit. Each protestor was separately notified in writing of the disposition of the protest.

I. DATA REVIEW & ANALYSIS

A. Bid Documents

Jefferson Parish Bid No. 50-00120070 contained technical and general specifications in addition to requiring pricing on 87 separate line items. Section 4.0, License/Qualifications & Permits, read in part:

The following licenses will be required for the bid and shall be submitted with the bid or bid will be deemed non-responsive.

- A Louisiana State Contractor License/Building Construction *and/or*¹
- A Louisiana State Specialty License in one of the following categories:
 - Landscaping/Irrigation
 - Landscape/Horticulture
 - Chemical Applicator
 - Arborist
 - Grading and Beautification
- The following licenses issued by the Louisiana State Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences shall be required for this bid:
 - Horticulture License

¹ Emphasis added.

➤ Chemical Applicator License

A copy of the front and back of the Horticulture License and the Chemical Applicator License shall be submitted with bid or bid will be deemed non-responsive.

The above specifications were later subject to addendums. Importantly, Addendum #2 deleted the provision which permitted “A Louisiana State Contractor License/Building Construction *and/or* ² A Louisiana State Specialty License...” and amended the technical specifications. The deletion effectively requiring the specialty license provision in addition to the state contractor’s license. The amended language was as follows:

The following licenses will be required for the bid and shall be submitted with the bid or bid will be deemed non-responsive.

- A Louisiana State Contractor License/Building Construction
- A Louisiana State Specialty License in one of the following categories:
 - Landscaping/Irrigation
 - Landscape/Horticulture
 - Chemical Applicator – **LICENSE CATEGORIES #3 AND #6**
 - Arborist
 - Grading and Beautification
- The following licenses issued by the Louisiana State Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences shall be required for this bid:
 - Horticulture License
 - Chemical Applicator License -- **LICENSE CATEGORIES #3 AND #6**

The above specifications were amended yet again by Addendum #3. Significantly, Addendum #3 added Arborist license to the mandated Louisiana State Specialty Licenses:

- The following licenses issued by the Louisiana State Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences shall be required for this bid:
 - Horticulture License
 - Chemical Applicator License -- **LICENSE CATEGORIES #3 AND #6**
 - ***Arborist License*** ³

Further, and based upon the below language, the bid documents did not clearly anticipate or permit the work covered by the bid to be performed by a sub-contractor: Section 4.0-Licenses/Qualifications & Permits states:

An employee holding the appropriate license must be on site whenever horticultural or chemical services are performed. Appropriate licensing

² Emphasis added.

³ Emphasis added.

determination are set according to Louisiana Department of Agriculture and Forestry. The successful bidder shall be responsible for the payment of permits, licenses, and certifications, etc., and cost of keeping all current during this contract period. (Emphasis supplied)

The JPOIG noted that the bid documents did not provide space for disclosure of a subcontractor. However, and relevant to the use of a subcontractor the following instructions apply to all Jefferson Parish bids:

By submitting a bid, vendor agrees to comply with all provisions of Louisiana Law as well as be in compliance with the Jefferson Parish Code of Ordinances, Louisiana Code of Ethics, applicable Jefferson Parish ethical standards and Jefferson Parish Resolution No. 113646 and/or Resolution No. 113647.”⁴

Resolution No. 113646 prescribes the general conditions and agreement for the purchase of materials, supplies or services and public works project.⁵ Resolution No. 11346 at Section 6 addresses subcontractors:

The Contractor shall not award any Work to any Subcontractor without the prior written approval of the [The Jefferson Parish Council], which approval will not be given until the Contractor submits to the [The Jefferson Parish Council] a written statement concerning the proposed award to the Subcontractor, which statement shall contain such information as the [The Jefferson Parish Council] may require. Such consent shall not be withheld unless a legal ground exists, such as, but not limited to, a subcontractor who has been disqualified from Parish projects.⁶

Thus, the subsequent bid amendments served to require compliance with the specialty license clause, in addition to the possession of a state contractor’s license. An Arborist license was added as a mandated Louisiana State Specialty License. Further, the bid documents require vendors be in compliance with State and Parish law, elements of which pertain to the use of sub-contractors. However, the bid documents do not anticipate or provide for use of a sub-contractor.

B. Rotolo Consultants, Inc. (“RCI”) Bid Submission

The JPOIG analyzed the bid submissions, and particularly that of RCI because it was deemed to be the lowest responsive bidder. The JPOIG verified that RCI submitted (1) a Louisiana State Contractor License/Building Construction; and a (2) Louisiana Specialty License - Ground Applicator. RCI also submitted licenses in the names of:

- Charles Hollingsworth, who holds a Louisiana Specialty License - Commercial Pesticide Applicator license and

⁴ Resolution No. 113647 is for general conditions for below ground projects or above ground public works projects and is not relevant for this type of procurement.

⁵ See Attachment A.

⁶ Resolution No. 11346 § 6 uses the term “Owner”. However, §66 of the agreement in question defines certain terms listed. “Owner” is defined as The Jefferson Parish Council. “Contractor” is defined as the person, firm or corporation with whom Owner has entered into the Agreement.

- Eric Michael Strecker, who holds a Louisiana Specialty License - Arborist.⁷

Based upon the technical specifications, it is not apparent from RCI's bid submission that RCI satisfied the technical specifications. RCI does not possess an Arborist license as required by the amended bid specifications. RCI submitted its bid proposal with evidence of an Arborist license held by Mr. Michael Strecker of Strecker, Inc.

In order to understand the relationship between RCI and Mr. Strecker, the JPOIG interviewed Mr. Keith Rotolo of RCI at 38001 Brownsvillage Rd. Slidell, LA 70460. In this interview Mr. Rotolo was asked about the relationship between RCI and Mr. Strecker. When asked if Eric Michael Strecker was an employee of RCI, Mr. Rotolo responded "no".⁸ When asked if Mr. Strecker has ever done work for RCI, Mr. Rotolo responded "yes he does. Typically a majority of the work Eric does is tree service whether it be tree removal tree pruning, that type of thing. We will use him for clearing and grubbing as well and we also use him for pressure washing".⁹ Mr. Rotolo confirmed that Mr. Strecker is used as a subcontractor and not as a regular employee.¹⁰ Mr. Rotolo also advised the JPOIG that Mr. Strecker is his first cousin.

Louisiana Specialty licenses named in the bid documents are regulated by the Louisiana Department of Agriculture and Forestry ("LDAF"). According to the LDAF, Mr. Strecker is a licensed Arborist for Strecker, Inc. JPOIG sent an inquiry to LDAF seeking clarity surrounding the state statute regarding the solicitation of fees or income when an Arborist license is involved. Specifically, we asked if a vendor can use one of its subcontractors to solicit business, assuming Strecker, Inc. would be a subcontractor. Tina Peltier, Assistant Director, Horticulture and Quarantine Programs, responded with the following:

A vendor can use a subcontractor who is licensed in the arborist profession to solicit business as long as the vendor identifies the licensed arborist and his place of business as the subcontractor in the bidding process. **According to our regulations, a person holding a license in a regulated profession may be the licensee for only one person or business.**¹¹

RCI did not identify Strecker, Inc. as a subcontractor. Under LDAF regulations, Mr. Strecker is only licensed to perform services in the name of Strecker, Inc. The JPOIG verified that Mr. Strecker is a licensed Arborist for Strecker, Inc. Thus, RCI could not properly submit its bid proposal to the Parish, naming Mr. Strecker as its licensed arborist because Mr. Strecker is not an employee of RCI and is only licensed to work as an arborist for Strecker, Inc. Therefore, RCI's inclusion and reliance upon Mr. Strecker's license as an arborist was a material misrepresentation or misstatement in its bid proposal.

During the pendency of this investigation, the LDAF undertook a separate investigation. Upon information and belief, RCI was informed by LDAF that RCI was required to name the

⁷ See Attachment B.

⁸ Interview of Keith Rotolo, 10/26/2017, 1:40 – 1:50.

⁹ Interview of Keith Rotolo, 10/26/2017, 2:00 - 2:27.

¹⁰ Interview of Keith Rotolo, 10/26/2017, 2:29 – 2:32.

¹¹ Emphases added.

subcontractor in the bid, if they do not have the Arborist License. Further, the failure to list the name of the subcontractor in the bid proposal is a violation of the Louisiana Horticulture Law & Rules and Regulations.¹²

C. Bid Protest

Per the Parish Administration's Procurement Manual ("Procurement Manual"), any bidder that submits a bid may protest in writing to the Director of Purchasing within 48 hours of bid opening. Of the three bidders, LCS and Thrive formally protested the bid being awarded to Rotolo on the grounds that the "Department of Agriculture does not show that they have a licenses Arborist on staff at the time of the submission and therefore would not be qualified to perform this project."¹³

The procurement manual is silent on a protest process. Mrs. Brenda Patel, Purchasing Director, communicated to the JPOIG that protest are reviewed by her, and more often than not, forwarded to the Parish Attorney's Office for assessment. In those cases a Parish attorney will formally respond to the complainant.¹⁴

The protests submitted by LCS and Thrive were both forwarded to Senior Assistant Parish Attorney Jacques Molaison, and he formally responded to both. In his response to LCS, Mr. Molaison stated, "I have reviewed Rotolo Consultants, Inc.'s bid submission which contains the required licenses in accordance with Public Bid Law and as required in the written bid specifications."¹⁵ In a follow up email, Mr. Molaison further stated:

The following will confirm our discussion of this afternoon. I have reviewed the matter, and as communicated below, it is my determination that your protest lacks merit for the reasons stated. Accordingly, I am considering this matter closed. Should you so desire, you may pursue legal action against Jefferson Parish in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.¹⁶

In his response to Thrive, Mr. Molaison stated:¹⁷

I have reviewed your assertions, along with Rotolo Consultants, Inc.'s bid submission. It is my determination and finding that Rotolo Consultants, Inc.'s bid submission is compliant with the licensing requirements contained in the Bid Specifications and Addenda, including licensure for the following classifications: Building & Construction; Municipal and Public Works Construction; Fencing; Landscaping; Grading and Beautification; Recreation and Sporting Facilities & Golf Courses; Swimming Pools, Water Features and Fountains, Ground

¹² See Attachment C.

¹³ See Attachment D.

¹⁴ Per telephone conversation with Brenda Patel on 10/31/17.

¹⁵ E-mail From Jacques Molaison to [REDACTED]@aol.com and copied to Brenda Patel. Provided to JPOIG on request to Purchasing Department. See Attachment E.

¹⁶ See Attachment E.

¹⁷ Protest by Little Computer Solutions, L.L.C. and Thrive of Louisiana, L.L.C. provided to JPOIG on request to Purchasing Department. See Attachment D.

Applicator; along with employee licenses for Landscape Horticulture, Arborist, and Commercial Pesticide Application. Further I confirmed that employer/employee relationship with the designated license holder, in addition to confirming additional Arborists on staff with Rotolo Consultants, Inc.¹⁸ As such, it my determination that your protest lacks merit, and I am considering the matter of this protest closed. Should you so desire, you may pursue legal action against the Parish of Jefferson in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.

D. Best Practices – Bid Protests

The Parish does not have a policy in place that deals with the intake, review, decision, and reporting on protested bids. The JPOIG conducted research on best practices of the subject matter. The JPOIG looked to federal, state law and local law for the examples of best practices. The JPOIG analyzed how government agencies responded to procurement protests.

1. Federal Regulations - Government Accountability Office (“GAO”)

The Government Accountability Office (“GAO”) is an independent, nonpartisan agency that investigates government spending and works to improve fiscal accountability in government. The GAO has reviewed the federal government’s bid protests process and supports transparency. The Code of Federal Regulations (“CFR”) is a codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government. Title 4 of the CFR Section 21 sets forth an extensive policy regarding bid protest. This section includes direction for filing of a protest as well as a hearing stage, remedies, and distribution of decisions. The CFR outlines eight (8) pieces of information that is needed in order to file a protest:

1. name, address and telephone number of protestor;
2. signed by protestor;
3. agency/department and bid number being protested;
4. statement of legal and factual grounds of protest, including copies of relevant documents;
5. set forth all information establishing that the protester is an interested party;
6. set forth all information establishing the timeliness of the protest;
7. request a ruling; and
8. state the form of relief sought.

Furthermore, 4 CFR §21 supports transparency by requiring agencies to furnish copies of the protest submission to all parties included, and it prescribes a timeline within which the agency shall file a report with the GAO.¹⁹ The CFR also allows for the request of the GAO to conduct a hearing in connection with a protest.²⁰ Lastly, the CFR prescribes specific remedial actions.

The key takeaway is that the Code of Federal Regulations provides a model for handling and evaluating bid protests which supports responsiveness and transparency for all interested parties.

¹⁸ The JPOIG reviewed the LDAF list of active professional Arborist and found no evidence that a current employee of RCI is a licensed Arborist.

¹⁹ 4 CFR §21.3(a)(c).

²⁰ 4 CFR §21.7(a).

2. State of Louisiana

Louisiana also provides a model for resolving protested solicitation and awards, La.R.S. 39:1671. This statute provides a person who is aggrieved in connection with the solicitation or award of a contract the right to protest during the pendency of the procurement process. Further, the statute outlines the procedures regarding the resolution of protest as well as deadlines for submitting protest.

The state statute points out that if a protest is not resolved by mutual agreement, the chief procurement officer or his designee shall, within fourteen days, issue a decision in writing. The decision shall state the reasons for the action taken and inform the protestant of its rights to administrative and judicial review. A copy of the decision is then furnished immediately to the protestant. Lastly, the state allows for a stay of procurements during the protest. The state shall not proceed further with the solicitation or with the awarding of the contract unless the chief procurement officer makes a written determination that the awarding of the contract is necessary without delay to protect the substantial interest of the state.²¹

3. Local -- City of New Orleans

The City of New Orleans has a Bureau of Purchasing Procurement Procedures manual readily available via its website.²² The City of New Orleans' Procedure manual outlines a detailed review policy that allows for not only interdepartmental responses but also allows the selected person(s) the chance to respond. This policy offers transparency as it shows how the final decision is determined which is based solely upon the basis of the written protest, the solicitation, selected person's response and any City-department responses.²³

E. Jefferson Parish – Bid Protest Practices

1. Bid Protests - Bid No. 50-00120070

In Mr. Molaison's response to LCS, the JPOIG can see components of the above practices although it is not established by clear policy. Mr. Molaison states a reason for the action taken and informed LCS of its rights to pursue legal action against the Parish of Jefferson.²⁴

In his response to Thrive, Mr. Molaison answers with greater detail, "I confirmed that employer/employee relationship with the designated license holder, in addition to confirming additional Arborists on staff with Rotolo Consultants, Inc." Again, Mr. Molaison presents no additional support which shows lack of transparency with the review process.

When the JPOIG interviewed Mr. Keith Rotolo, it was confirmed that Mr. Strecker is not an employee of RCI.²⁵ Furthermore, we received an email from RCI with an attached Accounts Payable report. This report list out all invoices, dates, and payments made to Strecker, Inc.²⁶

²¹ La.R.S. 39:1671. *See also* Attachment F.

²² <https://www.nola.gov/purchasing/documents/cno-bureau-of-purchasing-procurement-procedures-v-3/>

²³ *See* Attachment G.

²⁴ Mr. Molaison states that RCI bid submission contains the required license and that LCS's protest lacks merit. Mr. Molaison gave no reasoning on how he made his assessment that RCI's bid submission was complete.

²⁵ Interview of Keith Rotolo, 10/26/2017, 1.40 – 2.02.

²⁶ Refer to Attachment H.

Mr. Rotolo confirmed via a phone call with the JPOIG that Mr. Strecker was not paid 1099 wages. Therefore, it would appear that Mr. Molaison's assessment and reasoning for dismissing the protest is unsupported.

If the Parish had a more robust bid protest policy and procedure which incorporated elements of best practices, all interested parties, protesters and successful bidder, could have presented facts directly relevant to an objective determination of the merits of the protests. The Purchasing Director could have received response from the selected person(s), in this case RCI. In allowing RCI the ability to respond to LCS and Thrive's protest, the Parish could have made a decision based upon validated facts, supported by documentation, and made information available to all interested parties involved in the protest. Having a robust policy in place ensures transparency, due process, and gives confidence in the system to the public and potential bidder.

2. Bid Protest – JPOIG Case No. 2015-0017

This is not the first case in which the JPOIG has reported upon issues related to procurement disputes. JPOIG Case No. 2015-0017 involved the award of a contract following a Request for Proposal process. The contract was awarded, and a protest was filed. The Parish answered the protest with the following, "Jefferson Parish does not have a formal protest procedure for the RFP process."²⁷ In that case, the source of funding for the contract was a federal government grant for a community development program. The Parish Attorney's office ("PAO") was notified that "grantees and sub grantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency."²⁸ The PAO "acknowledged having reviewed the process finding no violation of local or federal procurement guidelines."²⁹ The JPOIG issued a memorandum to the PAO, Director of Purchasing, and Director of Finance on 02/14/17 asserting that a formalized protest procedure would seem to be required in procurements involving federal grant money.³⁰

²⁷ Refer to Attachment I.

²⁸ 24 CFR §85(36)(b)(12).

²⁹ Refer to Attachment I.

³⁰ 24 CFR §85(36)(b)(12).

FINDINGS AND RECOMMENDATIONS

Finding # 1: Parish failed to evaluate bid submission for accuracy of representations

Condition:

When accepting bid proposals, including all documents attached, the Parish has taken the stance that information and documents received will not be vetted. The JPOIG understands this position and that vetting every document could be cumbersome. However, when the Parish becomes aware of an issue, in this case, through a protest, the Parish should take extended steps in assuring that all protests are properly handled, researched, transparent and above all allow for due process. Currently, the Parish does not have clear guidelines or policies in place on this issue and therefore lacks transparency and due process.

Based upon our investigation it was confirmed that an Arborist license was a requirement contained in the bid specification and addendums, that appropriate licensing determination are set according to Louisiana Department of Agriculture and Forestry, and that by submitting a bid vendors agree to comply with all provisions of Louisiana Law as well as be in compliance with the Jefferson Parish Code of Ordinances, Louisiana Code of Ethics, applicable Jefferson Parish ethical standards and Jefferson Parish Resolution No. 113646 and/or Resolution No. 113647. It was also confirmed that RCI may have potentially violated state law, Louisiana RS 3:3804 (C)(D), by not disclosing a subcontractor, who is licensed in the arborist profession, while soliciting business using that subcontractor's license. In addition, our investigation concluded that Mr. Strecker is not an employee of RCI.

During the investigation the JPOIG became aware that RCI currently has four open contracts with the Parish. Of the four contracts, contract 55-00015844 required an Arborist license and RCI used Mr. Strecker's license in securing this contract, as well. In doing so RCI may have potentially violated state law LA RS 3:3804 (C)(D).

Recommendation:

It is our recommendation that the Parish develop a process for evaluating representations made in bids before awarding contract to ensure that representations are truthful and meet specifications of bid invitation.

Finding # 2: Parish does not have adequate process for bid protests

Condition:

This will be the second matter the JPOIG has reviewed regarding procurement protest procedures. As noted, the JPOIG referred an earlier case, 2015-0017, to the PAO, Purchasing Director, and Director of Finance notifying them of potential federal procurement guideline violations.³¹

Recommendation:

It is our recommendation that the Parish implement a robust policy to better handle and resolve disputes relating to protested bids. The Parish currently does not have a detailed policy on this matter. By revising and expanding on the current policy the Parish would be on par with other government agencies and municipalities. This action would ensure transparency, give due process and assure confidence in the system that actions will be rectified should additional information be presented.

In addition, it is our recommendation that RCI be deemed non-responsive and not be awarded a contract since, at the time of bid opening, RCI did not have all the required licenses identified in the bid specification package. The Parish could opt to re-advertise the bid or award the contract to the next lowest responsive bidder.

³¹ See Attachment I.

Resolution
No. 113646
General Conditions
and Agreements for
the Purchase of
Materials, Supplies or
Services and Public
Works Projects



provisions for the payment of prevailing wages to the various categories of workmen, mechanics, and/or laborers in accordance with any and all applicable federal or state statutes, rules, or regulations regarding prevailing wages.

SECTION 6. SUBCONTRACTS

A. The Contractor shall not award any Work to any Subcontractor without the prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the Subcontractor, which statement shall contain such information as the Owner may require. Such consent shall not be withheld unless a legal ground exists, such as, but not limited to, a subcontractor who has been disqualified from Parish projects.

B. If such consent is given, the Contractor will be permitted to sublet a portion of the Work, but shall perform with his own organization Work amounting to at least 50 percent of the total Contract cost. Any items designated in the Contract as "Specialty Items" may be performed by subcontract and the costs of such may be deducted from the total cost before computing the amount of Work required to be performed by the Contractor with his own organization.

C. If the Contractor shall sublet any part of the Contract, the Contractor shall be as fully responsible to the Owner for the acts and omissions of his Subcontractor, and of any persons either directly or indirectly employed by his Subcontractor, as he is for the acts and omissions of persons directly employed by himself.

D. Except as provided by law, this provision requiring at least 50 percent of the Work or services to be performed by the Contractor may be waived in whole or in part on Building Construction contracts by resolution, and the Chairman of the Council is authorized to use his discretion in regard to waiving this requirement. Additionally, except as otherwise provided by law, the Parish Attorney's Office is authorized to omit from Building Construction contracts in whole or in part the provision requiring at least 50 percent of the Work or services to be performed by the Contractor. The determination to waive the requirement in whole or in part that at least 50 percent of the Work or services to be performed by the Contractor must be set forth in the bid specifications or addenda.

SECTION 7. SUBCONTRACTORS

A. If the Supplementary Conditions or the Bid Instructions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with these requirements, Owner's written acceptance of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Revocation must be based on a legal ground, such as, but not limited to a subcontractor who has been disqualified from Parish projects. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Design Professional to reject defective Work. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Design professional and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of Owner or Design Professional to pay or to see to the payment of

Mr. Eric Strecker's
Arborist License





HORTICULTURE REGISTRATION: ERIC MICHAEL STRECKER

Date: 01/19/2017

LDAF ID: 121065

LICENSE(S): ARBORIST

17-1333

Please verify information for correctness. If changes are necessary, make corrections and promptly return to issuing agency.

9

LOUISIANA DEPARTMENT OF AGRICULTURE & FORESTRY
 MIKE STRAIN DVM, COMMISSIONER
 Agricultural & Environmental Sciences, 5825 Florida Blvd., Suite 3002, Baton Rouge, LA 70806, (225) 952-8100, FAX (225) 925-3760

Be it known, that effective 02/01/2017 through 01/31/2018 having complied with all relevant requirements of the Louisiana Revised Statutes, the individual named below is hereby licensed in the following profession(s):

LICENSE(S): ARBORIST 17-1333

ERIC MICHAEL STRECKER
 [REDACTED]

Mike Strain
 Commissioner

DISPLAY IN A PROMINENT PLACE LDAF ID: 121065



Email from The
Louisiana Department
of Agriculture and
Forestry



From: [Milton Schleismann](#)
To: plumpkin@jpoig.net
Cc: [Rose Broggi](#); [Milton Schleismann](#)
Subject: RCI Review by Jefferson Parish.
Date: Wednesday, October 25, 2017 1:50:54 PM

Mr. Lumpkin, the Louisiana Department of Agriculture & Forestry Baton Rouge Office of Horticulture & Quarantine Programs. received a complaint regarding the bid submitted by RCI. Rose Broggi and I investigated the complaint and we met with Mr. Strecker. He informed us that he was a sub contractor for RCI on the project. We also met with RCI and informed them that they are required to name the sub contractor in the bid, if they do not have the Arborist License. We also explained to them that failure to list the name of the sub-contractor in the bid proposal, is a violation of the Louisiana Horticulture Law & Rules and Regulations. Rose Broggi will be filing an investigation report with my Baton Rouge Office regarding the complaint. I hope this serves as the response that you requested from Rose Broggi. My name is Milton Schleisamann and I am the New Orleans District Manager for LDAF, and Rose Broggi's Supervisor.

This electronic message transmission contains information from the Louisiana Department of Agriculture and Forestry that may be confidential or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please delete the message and notify the sender by electronic mail immediately. Thank you.

Formal Protest



Paul Lumpkin

From: Jacques Molaison <JMolaison@jeffparish.net>
Sent: Thursday, September 7, 2017 3:45 PM
To: [REDACTED]@thrivelawns.com
Cc: Brenda Patel; Sidney Duffy
Subject: FW: JP Bid # 50-00120070
Attachments: ARL 9.7.17.pdf

Dear Ms. Finnan: I am Senior Counsel to Jefferson Parish and head of the transactional law group for Jefferson Parish. I am in receipt of your written protest on the above-captioned bid. I have reviewed your assertions, along with Rotolo Consultants, Inc.'s bid submission. It is my determination and finding that Rotolo Consultants, Inc.'s bid submission is compliant with the licensing requirements contained in the Bid Specifications and Addenda, including licensure for the following classifications: Building & Construction; Municipal and Public Works Construction; Fencing; Landscaping; Grading and Beautification; Recreation and Sporting Facilities & Golf Courses; Swimming Pools, Water Features and Fountains, Ground Applicator; along with employee licenses for Landscape Horticulture, Arborist, and Commercial Pesticide Application. Further I confirmed that employer/employee relationship with the designated license holder, in addition to confirming additional Arborists on staff with Rotolo Consultants, Inc. As such, it my determination that your protest lacks merit, and I am considering the matter of this protest closed. Should you so desire, you may pursue legal action against the Parish of Jefferson in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana. I hope that this addresses your concerns. If I may be of additional assistance, please contact me at the numbers listed below. On behalf of Jefferson Parish, I thank you for your interest in doing business with Jefferson Parish.

Jacques Louis Molaison
Senior Assistant Parish Attorney
Office of the Parish Attorney
Parish of Jefferson
200 Derbigny Street, 5th Floor
Gretna, Louisiana 70053
(504) 364-3822 (Office Main)
(504) 364-3803 (Office Direct)
(804) 658-6399 (Mobile)
jmolaison@jeffparish.net

From: Sidney Duffy
Sent: Thursday, September 7, 2017 1:52 PM
To: Jacques Molaison <JMolaison@jeffparish.net>; Brenda Patel <BPatel@jeffparish.net>
Cc: Jenifer Lotz <JLotz@jeffparish.net>
Subject: FW: JP Bid # 50-00120070

Thank you,
Ms. Sidney Duffy, Buyer II
Jefferson Parish Purchasing Department
200 Derbigny Street, Suite 4400
Gretna, LA 70053
Phone: 504-364-2678
Fax: 504-364-2693
Email: sduffy@jeffparish.net

From: [REDACTED]@thriveawns.com]
Sent: Thursday, September 07, 2017 12:32 PM
To: Sidney Duffy
Cc: Donald Cole; Brad Shaffer
Subject: Re: JP Bid # 50-00120070

Sidney,

Attached is the list of Licensed Arborist from the Department of Agriculture and Rotolo is not listed.

Amie Finnan, Estimator/Project Management



2800 Breaux Ave., Harvey, LA 70058
O. 504 -263-3588

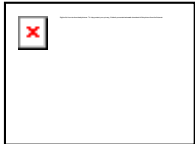
[REDACTED]
[thriveawns.com](mailto:[REDACTED]@thriveawns.com)
www.thriveawns.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

On Thu, Sep 7, 2017 at 12:27 PM, Amie Finnan [REDACTED]@thriveawns.com> wrote:
Sidney,

Thrive of Louisiana, L.L.C. would like to contest this bid that has been awarded to Rotolo (RCI). The Department of Agriculture does not show that they have a licensed Arborist on staff at the time of submission and therefore they would not be qualified to perform this project. Please advise.

Amie Finnan, Estimator/Project Management



2800 Breaux Ave., Harvey, LA 70058
O. 504 -263-3588

[REDACTED]
[@thriveawns.com](mailto:[REDACTED]@thriveawns.com)
www.thriveawns.com

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

Parish Attorney's
Office Response to
Formal Protest



Paul Lumpkin

From: Jacques Molaison <JMolaison@jeffparish.net>
Sent: Wednesday, September 6, 2017 2:45 PM
To: [REDACTED]@aol.com
Cc: Brenda Patel; Jenifer Lotz
Subject: FW: Bid No. 50-001120070 - Landscape Maintenance for Jefferson Performing Arts Center

Dear Mr. Little:

The following will confirm our discussion of this afternoon. I have reviewed the matter, and as communicated below, it is my determination that your protest lacks merit for the reasons stated. Accordingly, I am considering this matter closed. Should you so desire, you may pursue legal action against Jefferson Parish in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.

Sincerely,

Jacques Louis Molaison
Senior Assistant Parish Attorney
Office of the Parish Attorney
Parish of Jefferson
200 Derbigny Street, 5th Floor
Gretna, Louisiana 70053
(504) 364-3822 (Office Main)
(504) 364-3803 (Office Direct)
(804) 658-6399 (Mobile)
jmolaison@jeffparish.net

From: Jacques Molaison
Sent: Tuesday, September 5, 2017 4:03 PM
To: [REDACTED]@aol.com' <[REDACTED]@aol.com>
Cc: Brenda Patel <BPatel@jeffparish.net>; Jenifer Lotz <JLotz@jeffparish.net>
Subject: Bid No. 50-001120070 - Landscape Maintenance for Jefferson Performing Arts Center

Dear Mr. Little:

I am Senior Counsel to Jefferson Parish, and am the head of the transactional law group for the Jefferson Parish Attorney's Office. I am in receipt of your written protest regarding the above-captioned bid. I have reviewed the allegations contained in your written protest, along with your firm's bid submission. It is my determination that the rejection of your bid was legally sound and in accordance with Louisiana Public Bid Law. Your bid submission failed to appropriately use the required bid form which provides for both units and pricing per unit. As a result, Little Computer Solutions, Inc.'s submission was rejected and non-responsive. Further, Little Computer Solutions, Inc. was not the lowest bidder for this particular bid.

Additionally, please be advise that Little Computer Solutions, Inc. was not entitled to review or obtain copies of another vendor's submissions at the date of bid opening. Unfortunately you seem to be operating under some confusion regarding applicability of LSA-R.S. 38:2212(e). That particular section references and applies to the bid package and specifications, and not another's vendor's submission. Finally, I have reviewed Rotolo Consultants, Inc.'s bid submission which contains the required licenses in accordance with Public Bid Law and as required in the written bid

specifications. On behalf of Jefferson Parish, thank you for your continued interest in doing business with Jefferson Parish, and we welcome your future endeavors to that end. If I can be of assistance, please contact me. I can be reached at the numbers listed below.

Sincerely,

Jacques Louis Molaison
Senior Assistant Parish Attorney
Office of the Parish Attorney
Parish of Jefferson
200 Derbigny Street, 5th Floor
Gretna, Louisiana 70053
(504) 364-3822 (Office Main)
(504) 364-3803 (Office Direct)
(804) 658-6399 (Mobile)
jmolaison@jeffparish.net

LA R.S. 39:1671
(Right to Protest)



RS 39:1671**PART VI. LEGAL AND CONTRACTUAL REMEDIES
SUBPART A. PRE-LITIGATION RESOLUTION
OF CONTROVERSIES****§1671. Authority to resolve protested solicitations and awards**

A. Right to protest. Any person who is aggrieved in connection with the solicitation or award of a contract issued by the applicable chief procurement officer shall protest to the chief procurement officer. Protests with respect to a solicitation shall be submitted in writing at least two days prior to the opening of bids on all matters except housing of state agencies, their personnel, operations, equipment, or activities pursuant to R.S. 39:1643 for which such protest shall be submitted at least ten days prior to the opening of bids. Protests with respect to the award of a contract shall be submitted in writing within fourteen days after contract award.

B. Authority to resolve protests. The chief procurement officer or his designee shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved person concerning the solicitation or award of a contract. This authority shall be exercised in accordance with regulations.

C. Decision. If the protest is not resolved by mutual agreement, the chief procurement officer or his designee shall, within fourteen days, issue a decision in writing. The decision shall:

- (1) State the reasons for the action taken.
- (2) Inform the protestant of its right to administrative and judicial review as provided in this

Chapter.

D. Notice of decision. A copy of the decision under Subsection C of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

E. Finality of decision. A decision under Subsection C of this Section shall be final and conclusive unless one of the following applies:

- (1) The decision is fraudulent.
- (2) The person adversely affected by the decision has timely appealed administratively to the

commissioner in accordance with R.S. 39:1683.

F. Stay of procurements during protests. In the event of a timely protest under Subsection A of this Section, the state shall not proceed further with the solicitation or with the awarding of the contract unless the chief procurement officer makes a written determination that the awarding of the contract is necessary without delay to protect the substantial interests of the state. Upon such determination by the chief procurement officer, no court shall enjoin progress under the award except after notice and hearing.

G. Award of costs to protestants. In addition to any other relief, when the protest is administratively or judicially sustained and the protesting bidder or proposer should have been awarded the contract but is not, the protesting bidder or proposer shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid or proposal preparation costs other than attorney fees, provided that any administrative determination of such costs shall be subject to the written concurrence of the attorney general.

H. Promulgation of regulations. The state chief procurement officer is hereby authorized to promulgate regulations relative to protests, in accordance with the Administrative Procedure Act, to implement the provisions of R.S. 39:1600(D).

Added by Acts 1979, No. 715, §1, eff. July 1, 1980. Amended by Acts 1984, No. 344, §1; Acts 1985, No. 52, §1; Acts 1988, No. 694, §1, eff. July 15, 1988; Acts 2011, No. 210, §2, eff. July 1, 2011; Acts 2014, No. 864, §2, eff. Jan. 1, 2015.

City of New Orleans
Procurement Protest
Procedures





Bureau of Purchasing Procurement Procedures

17. Upon final selection by the Selection Committee, the requesting department shall begin the contracting process with the selected respondent.
18. Purchasing shall maintain all formal procurement records.

2.4 Unique and Non-Competitive Procurement (sole-source)

1. As part of the solicitation process, the requesting department must request non-competitive procurement of good, non-professional service, or material from the Chief Procurement Officer.
2. The requesting department's request must include the following:
 - a. Completed *Non-Construction Bid Procurement Authorization Form*
 - i. The type of request: Other must be selected
 - ii. CAO approval (required on the *Bid Procurement Authorization Form – Not for Construction*).
 - b. Letter from the department head requesting the non-competitive procurement that explains why the procurement is not amenable to competitive procurement and value to the City of such a procurement.
 - c. Letter from the vendor describing the service, material, or good to be provided
 - d. Completed ICE Form
3. The CPO shall review all required documentation provided and approve or deny non-competitive procurement in his or her sole discretion.
4. Upon approval of non-competitive procurement, the requesting department shall either begin the contracting process, or if permitted to proceed solely with a purchase order, notify Purchasing to issue the PO, based upon a pre-encumbered requisition in the City's financial system.
5. If proceeding solely with under a PO, Purchasing shall provide copies of the PO delivered to the vendor and the requesting department. The Bureau of Purchasing shall retain one copy of the PO.
6. Upon receiving a fully-executed contract or issuance of the PO, the requesting department shall issue the notice to proceed.
7. Purchasing shall maintain all formal procurement records.

2.5 Non Responsive or Not Responsible Respondents

1. If a respondent is determined to be non-responsive or not responsible, Purchasing sends a written letter to the agency stating the reasons for determination.
2. For Formal sealed bids, Purchasing will only send a Responsive/Responsibility letter for the two lowest bids.
3. The Purchasing Buyer ensures that copies of Responsive/Responsibility letters are located in purchasing's procurement file.
4. For Public Works only: Not responsible bidders have 5 days after receipt of letter to request a hearing with the Administrative Hearing Officer.
5. Purchasing is prohibited to award to the next lowest bidder until hearing is completed.
6. If the lowest bidder is deemed responsible as a result of the hearing, they are awarded the bid.

2.6 Procurement Protest Procedures

1. Actual or prospective bidders and respondents capable of submitting responsive and responsible bids or proposals may protest of the form of solicitation, the content of the solicitation itself, including but not limited to the conditions, specifications and/or requirements, or the selection.
2. Selection protests may only be filed by actual bidders or respondents who would then be selected if the protest is successful.



Bureau of Purchasing Procurement Procedures

3. All protests regarding the type of solicitation or content of the solicitation must be filed no later than seventy-two (72) hours prior to the bid or proposal submission deadline. Failure to timely file such a protest shall constitute a waiver of all rights to challenge the type of solicitation or content of the solicitation.
4. All selection protests, including all supporting documents, must be filed no later than earlier of the close of business fifteen (15) days from the following:
 - a. The vendor knew or should have known of the factual basis for its protest; or
 - b. The City's execution of any contract arising from the selection.
5. All protests must be filed in writing and submitted to the CPO via e-mail, facsimile, mail or hand delivery.
6. All protests must include the following, at a minimum:
 - a. Identification of the solicitation at issue including any solicitation number;
 - b. The protestor's name, address, fax and telephone numbers, and e-mail address;
 - c. A description of the protestor's standing to submit the protest;
 - d. A clear and detailed statement of all legal and factual grounds for the protest, including appropriate references to the specific section of any materials
 - e. A selection protest shall not include explanation or advocacy of any grounds for protesting the type of solicitation or content of the solicitation;
 - f. All documents, with an index, that the protestor believes necessary to assess the legal or factual basis of the protest; and
 - g. A statement of the specific relief requested.
7. Protests that fail to meet any of the above requirements may be rejected. The City shall not consider any grounds for a protest not expressly included in the protest filings.
8. The CPO shall notify the requesting department of any protests and invite the requesting department to provide a written response to the protest.
9. The CPO shall notify the selected person(s) of any selection and allow the selected person(s) the opportunity to provide a written response with in five (5) calendar days of notification.
10. If the protest is DBE-related, the CPO will notify the Office of Supplier Diversity (OSD) and invite OSD to provide a written response to the protest.
11. The CPO will promptly review and resolve all protests solely upon the basis of the written protest, the solicitation, selected person's response (if applicable) and any City-department responses.
12. No hearing will be provided.
13. The CPO will provide the protester, the selected person(s) (if applicable), and all involved City-departments with a written decision stating the reasons for the decision.
14. Any waivers to this procedure must be approved by the CAO in writing.

2.7 Emergency Procurement Procedures

For State-declared emergencies, the city follows procurement procedures which adhere to the tenets of competitive procurement to the extent practicable, while ensuring that the City maintains the flexibility it needs to meet the needs of the emergency.

Declared Emergencies defined within the Louisiana Homeland Security and Emergency Assistance and Disaster Act La. R.S. 29:721 et.seq confers upon the Mayor of the City of New Orleans emergency powers to deal with emergencies and disasters of unprecedented size and destructiveness resulting from terrorist events, enemy attack, sabotage, or other hostile action or from fires, flood, earthquake or other natural or manmade causes.

2016 and 2017 RCI
Accounts Payable
Report for Strecker,
Inc.



Paid Invoice Register

Rotolo Consultants Inc

10-31-2017 Page 1
System Date: 10-31-2017

Payment date from: 1-01-2016

Payment date to: 12-31-2016

<u>Invoice</u>	<u>Payment Type</u>	<u>Payment Account</u>	<u>Payment Reference</u>	<u>Payment Date</u>	<u>Original Invoice Amount</u>	<u>Amount Paid</u>	<u>Discount Taken</u>	<u>Misc. Ded. Applied</u>	<u>Current Invoice Balance</u>
ESTRECKER Strecker Inc.									
12ES2726	Check	WHITNEYOP	65299	01-22-2016	350.00	350.00			
12ES2728	Check	WHITNEYOP	65182	01-15-2016	650.00	650.00			
12ES2730	Check	WHITNEYOP	65679	02-19-2016	550.00	550.00			
12ES2732	Check	WHITNEYOP	65299	01-22-2016	3,900.00	3,900.00			
12ES2733	Check	WHITNEYOP	65455	01-29-2016	2,500.00	2,500.00			
12ES2735	Check	WHITNEYOP	65937	02-29-2016	3,450.00	3,450.00			
12ES2736	Check	WHITNEYOP	65937	02-29-2016	1,900.00	1,900.00			
12ES2737	Check	WHITNEYOP	65937	02-29-2016	5,500.00	5,500.00			
12ES2738	Check	WHITNEYOP	66099	03-07-2016	850.00	850.00			
12ES2740	Check	WHITNEYOP	66125	03-11-2016	7,300.00	7,300.00			
12ES2741	Check	WHITNEYOP	66280	03-18-2016	1,000.00	1,000.00			
12ES2744	Check	WHITNEYOP	66425	03-25-2016	1,950.00	1,950.00			
12ES2747	Check	WHITNEYOP	66479	04-01-2016	650.00	650.00			
12ES2752	Check	WHITNEYOP	66793	04-15-2016	650.00	650.00			
12ES2755	Check	WHITNEYOP	66945	04-22-2016	6,000.00	6,000.00			
12ES2756	Check	WHITNEYOP	66945	04-22-2016	5,000.00	5,000.00			
12ES2759	Check	WHITNEYOP	67130	04-29-2016	1,500.00	1,500.00			
12ES2760	Check	WHITNEYOP	67198	05-05-2016	3,700.00	3,700.00			
12ES2761	Check	WHITNEYOP	67198	05-05-2016	1,800.00	1,800.00			
12ES2762	Check	WHITNEYOP	67198	05-05-2016	1,300.00	1,300.00			
12ES2763	Check	WHITNEYOP	67208	05-06-2016	1,500.00	1,500.00			
12ES2766	Check	WHITNEYOP	67208	05-06-2016	2,700.00	2,700.00			
12ES2767	Check	WHITNEYOP	67208	05-06-2016	3,160.00	3,160.00			
12ES2770	Check	WHITNEYOP	67638	05-27-2016	400.00	400.00			
12ES2775	Check	WHITNEYOP	67638	05-27-2016	750.00	750.00			
12ES2776	Check	WHITNEYOP	67638	05-27-2016	1,150.00	1,150.00			
12ES2782	Check	WHITNEYOP	67944	06-10-2016	950.00	950.00			
12ES2783	Check	WHITNEYOP	68015	06-10-2016	1,600.00	1,600.00			
12ES2786	Check	WHITNEYOP	68288	06-17-2016	1,800.00	1,800.00			
12ES2791	Check	WHITNEYOP	68288	06-17-2016	1,200.00	1,200.00			
12ES2794	Check	WHITNEYOP	68513	06-28-2016	3,500.00	3,500.00			
12ES2797	Check	WHITNEYOP	68513	06-28-2016	1,200.00	1,200.00			
12ES2800	Check	WHITNEYOP	68565	07-01-2016	1,350.00	1,350.00			
12ES2801	Check	WHITNEYOP	68565	07-01-2016	2,800.00	2,800.00			

Paid Invoice Register

Rotolo Consultants Inc

10-31-2017 Page 2
System Date: 10-31-2017

Payment date from: 1-01-2016

Payment date to: 12-31-2016

<u>Invoice</u>	<u>Payment Type</u>	<u>Payment Account</u>	<u>Payment Reference</u>	<u>Payment Date</u>	<u>Original Invoice Amount</u>	<u>Amount Paid</u>	<u>Discount Taken</u>	<u>Misc. Ded. Applied</u>	<u>Current Invoice Balance</u>
ESTRECKER Strecker Inc.									
12ES2802	Check	WHITNEYOP	68747	07-08-2016	2,250.00	2,250.00			
12ES2803	Check	WHITNEYOP	68747	07-08-2016	1,088.00	1,088.00			
12ES2804	Check	WHITNEYOP	68809	07-15-2016	3,500.00	3,500.00			
12ES2806	Check	WHITNEYOP	68809	07-15-2016	1,800.00	1,800.00			
12ES2807	Check	WHITNEYOP	69220	07-29-2016	650.00	650.00			
12ES2809	Check	WHITNEYOP	69220	07-29-2016	17,550.00	17,550.00			
12ES2810	Check	WHITNEYOP	69543	08-05-2016	1,490.00	1,490.00			
12ES2812	Check	WHITNEYOP	69583	08-12-2016	5,000.00	5,000.00			
12ES2816	Check	WHITNEYOP	69583	08-12-2016	2,950.00	2,950.00			
12ES2817	Check	WHITNEYOP	69924	08-19-2016	1,400.00	1,400.00			
12ES2818	Check	WHITNEYOP	69924	08-19-2016	1,500.00	1,500.00			
12ES2822	Check	WHITNEYOP	70167	09-02-2016	11,650.00	11,650.00			
12ES2823	Check	WHITNEYOP	70082	09-02-2016	2,650.00	2,650.00			
12ES2824	Check	WHITNEYOP	70082	09-02-2016	4,275.00	4,275.00			
12ES2829	Check	WHITNEYOP	70567	09-16-2016	2,850.00	2,850.00			
12ES2830	Check	WHITNEYOP	70567	09-16-2016	3,250.00	3,250.00			
12ES2831	Check	WHITNEYOP	70567	09-16-2016	1,140.00	1,140.00			
12ES2834	Check	WHITNEYOP	70778	09-30-2016	500.00	500.00			
12ES2835	Check	WHITNEYOP	71028	10-07-2016	2,350.00	2,350.00			
12ES2836	Check	WHITNEYOP	71028	10-07-2016	4,800.00	4,800.00			
12ES2837	Check	WHITNEYOP	71028	10-07-2016	2,415.00	2,415.00			
12ES2838	Check	WHITNEYOP	71120	10-14-2016	5,200.00	5,200.00			
	Check	WHITNEYOP	999111925	11-18-2016					
12ES2839	Check	WHITNEYOP	71028	10-07-2016	1,750.00	1,750.00			
12ES2840	Check	WHITNEYOP	71028	10-07-2016	1,800.00	1,800.00			
	Check	WHITNEYOP	71431	10-24-2016					
12ES2843	Check	WHITNEYOP	71028	10-07-2016	1,000.00	1,000.00			
12ES2847	Check	WHITNEYOP	71120	10-14-2016	3,800.00	3,800.00			
12ES2848	Check	WHITNEYOP	71120	10-14-2016	4,890.00	4,890.00			
12ES2849	Check	WHITNEYOP	71431	10-24-2016	750.00	750.00			
12ES2850	Check	WHITNEYOP	71281	10-28-2016	12,035.00	12,035.00			
12ES2851	Check	WHITNEYOP	71281	10-28-2016	850.00	850.00			
12ES2852	Check	WHITNEYOP	71431	10-24-2016	2,940.00	2,940.00			
12ES2853	Check	WHITNEYOP	71678	11-04-2016	4,125.00	4,125.00			

Paid Invoice Register

Rotolo Consultants Inc

10-31-2017 Page 3
System Date: 10-31-2017

Payment date from: 1-01-2016

Payment date to: 12-31-2016

<u>Invoice</u>	<u>Payment Type</u>	<u>Payment Account</u>	<u>Payment Reference</u>	<u>Payment Date</u>	<u>Original Invoice Amount</u>	<u>Amount Paid</u>	<u>Discount Taken</u>	<u>Misc. Ded. Applied</u>	<u>Current Invoice Balance</u>
ESTRECKER Strecker Inc.									
12ES2854	Check	WHITNEYOP	71281	10-28-2016	950.00	950.00			
12ES2856	Check	WHITNEYOP	71678	11-04-2016	9,700.00	9,700.00			
12ES2857	Check	WHITNEYOP	71753	11-11-2016	13,920.00	13,920.00			
12ES2858	Check	WHITNEYOP	71678	11-04-2016	500.00	500.00			
12ES2860	Check	WHITNEYOP	72027	11-18-2016	2,600.00	2,600.00			
12ES2865	Check	ENTERPRISE	200331	12-09-2016	2,940.00	2,940.00			
12ES2866	Check	ENTERPRISE	200331	12-09-2016	3,350.00	3,350.00			
12ES2868	Check	ENTERPRISE	200466	12-22-2016	1,200.00	1,200.00			
12ES2869	Check	ENTERPRISE	200466	12-22-2016	5,000.00	5,000.00			
12ES2870	Check	ENTERPRISE	200574	12-30-2016	1,000.00	1,000.00			
12ES2871	Check	ENTERPRISE	200574	12-30-2016	200.00	200.00			
12ES2872	Check	ENTERPRISE	200574	12-30-2016	1,400.00	1,400.00			
12ES2873	Check	ENTERPRISE	200574	12-30-2016	1,000.00	1,000.00			
12ES2874	Check	ENTERPRISE	200574	12-30-2016	2,850.00	2,850.00			
12ES2875	Check	ENTERPRISE	200574	12-30-2016	1,500.00	1,500.00			
				Vendor Totals	236,868.00*	236,868.00*	.00*	.00*	.00*
				Report Totals	236,868.00*	236,868.00*	.00*	.00*	.00*

Memo to Parish
Attorney, Director of
Purchasing, and
Finance Director –
Case 2015-0017





OFFICE OF INSPECTOR GENERAL JEFFERSON PARISH



DAVID N. McCLINTOCK
INSPECTOR GENERAL

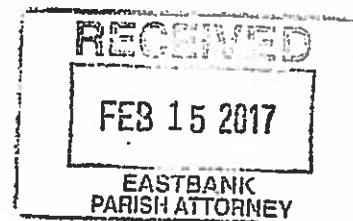
February 14, 2017

VIA EMAIL

TO: Michael J. Power, Parish Attorney
Brenda Campos, Director of Purchasing
Tim Palmatier, Finance Director

FROM: David McClintock, Inspector General

RE: RFP 0315 and Compliance with 24 CFR 85(36)(b)(12)



The Jefferson Parish Office of Inspector General has obtained information regarding Parish procurement item RFP-0315 and potential noncompliance with 24 CFR 85(36)(b)(12) as it relates thereto. The purpose of this correspondence is to make your office aware of this information as the department(s) more appropriately suited to initially determine and address such matters.

RFP 0315 was designed to obtain competitive proposals to provide technical assistance to the Department of Community Development in regards to best practices in the management of community development programs.

With an initial due date of July 18, 2014, Calvin Parker Consulting, LLC submitted a timely proposal in response to RFP 0315. After a four month period in which to review the proposals that had been submitted, the Parish held a public meeting on November 18, 2014 at which the Parish's Evaluation Committee openly discussed the relative merits of the proposals. After the evaluation meeting, the secretary of the committee forwarded a memorandum containing score sheets and price proposals to the Jefferson Parish Council, the Department of Community Development, committee members and the proposers on November 18, 2014. This initial ranking had GCR, Inc. ranked as the high scorer. Soon thereafter, representatives from Calvin Parker Consulting LLC subsequently discovered an error by which the Parish incorrectly tabulated the scoring data. Upon notification and review, the Parish acknowledged the mistake and forwarded a corrected memorandum and score sheet to all parties on November 20, 2014. Calvin Parker Consulting was now the high scorer with 329 points and GCR, Inc. was the second highest with 320 points. On January 28, 2015, the Jefferson Parish Council selected GCR, Inc. for RFP 0315. This selection was made at a public meeting which provides time for members of the public to discuss items to be considered by the Council.

On March 30, 2015, Calvin Parker sent a letter to Brenda Campos on behalf of Calvin Parker Consulting, LLC, wherein Parker contested the selection of GCR, Inc. and asserted several deficiencies associated with the RFP-0315 procurement process allegedly in violation of 24 CFR 85. In response by letter dated April 2, 2015, Assistant

5401 JEFFERSON HIGHWAY
JEFFERSON, LA 70123

February 14, 2017

Mr. Michael J. Power, Ms. Brenda Campos, Mr. Tim Palmatier

Page 2

Parish Attorney V. Ruth Walker informed Parker that, "Jefferson Parish does not have a formal protest procedure for the RFP process." Nevertheless, Ms. Walker acknowledged having reviewed the process finding no violation of local or federal procurement guidelines.

Copies of the referenced correspondence are attached for your convenience.

24 CFR 85 (36) addresses the federal protocol imposed upon grantees when property or services are procured under a federal grant. Generally speaking, these federal regulations allow State and local governments to utilize their own written procurement processes for making awards under a grant provided that the process allows for full and open competition, absence of conflicts of interests, and processes which harmonize with State and local law among other listed requirements. The federal regulations do also permit noncompetitive procurement under certain limited circumstances.

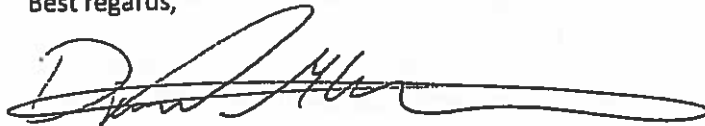
It is noteworthy to add that 24 CFR 85(36)(b)(12) requires that grantees have protest procedures to handle and resolve disputes relating to their procurements as indicated in pertinent part below:

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency.

In this case, Jefferson Parish, as the grantee, would seem to be required to have formalized protest procedures in contrast to the response provided to Calvin Parker by Parish Attorney Walker indicated above. Nevertheless, the matter is referred to the Office of the Parish Attorney, Finance Director, and the Director of Purchasing for review and further action as may be appropriate.

Should you have any questions or require any further clarification, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink, appearing to read "David McClintock", with a long horizontal flourish extending to the right.

David McClintock

Parish Response





JEFFERSON PARISH

Office of the Parish Attorney

Michael S. Yenni
Parish President

November 16, 2017

Michael J. Power
Parish Attorney
Jeremy D. Dwyer
Deputy Parish Attorney

VIA EMAIL ONLY

Mr. David McClintock, I.G.
Office of the Inspector General
Parish of Jefferson, State of Louisiana
5401 Jefferson Highway
Jefferson, Louisiana 70123

RE: Report No. 2017-0031
Public Bid 50-00120070 – JPAC Landscaping Maintenance

Dear Mr. McClintock:

The following is the Administration's response in reference to Public Bid 50-00120070 for JPAC Landscaping Maintenance. Reference is made to the Memorandum to Council from the Office of Inspector General dated October 25, 2017, (hereinafter, "Memo"), relative to the above captioned Public Bid, which was delivered to Council immediately prior to the Jefferson Parish Council meeting of even date. Additional reference is made to the Office of Inspector General's Report, dated November 14, 2017, (hereinafter, "Report"), on the same topic delivered to Council and the Administration immediately prior to the November 15, 2017, Council Meeting. The Memo refers to Bid 50-00120070 as both an RFP as well as a Public Bid. Additionally, the Report delivered to Council and the Administration on November 15, 2017, is labeled on page 1 as a "Confidential Final Report" and then on page 2 as a "Confidential Draft Report," yet page 3 of the Report refers to "JPOIG Audit, 2016-0021, Jefferson Parish Finance Authority." Though the foregoing illustrates the Office of Inspector General's pattern of flawed work products, and at best a fundamental mis-understanding of the procurement process in question, the following is respectfully submitted in response:

Pertinent Facts Related to Public Bid 50-00120070:

A. The Bid.

The Jefferson Parish Purchasing Department solicited bids for the JPAC Landscaping Maintenance via public advertisements on July 5, 12, and 19, 2017. A mandatory pre-bid conference was held July 27, 2017 at 9:00 a.m. Three vendors were in attendance: Little Computer Solutions, Inc., (hereinafter, "Little"), Thrive of Louisiana, LLC, (hereinafter, "Thrive")

and Rotolo Consultants, Inc., (hereinafter “Rotolo”). During the bid solicitation process, a total of four (4) Addenda were issued, all in conformity with applicable law, which extended the bid response deadlines, and revised the work specifications.

The advertised specifications required the following licenses issued by the Louisiana State Department of Agriculture and Forestry – Office of Agriculture and Environmental Sciences: (1) Horticulture License; (2) Chemical Applicator Licenses – Category #3 and Category #6, and finally (3) Arborist License. Evidence in the form of copies of those licenses (both front and back) were required to be provided with the bid submission or that bid would be deemed “non-responsive.” Bids were received on the August 29, 2017, deadline from all three (3) of the aforementioned firms. It was determined at bid opening that Rotolo was the lowest responsible bidder, followed by Thrive as the second lowest bidder. Little was rejected as non-responsive due to its failure to complete the bid form correctly in terms of units and cost per unit.

B. The Little Protest.

On August 31, 2017, Little Computer Solutions, Inc., filed a protest, (hereinafter, the “Little Protest”), in person at the Jefferson Parish Purchasing Department’s Office located at the General Government Building. That protest centered around (1) rejection of Little’s bid as non-responsive, (2) Little’s demand for all bid submissions from the remaining competing firms, and (3) assertions regarding the Rotolo licenses. In accordance with established Jefferson Parish bid protest protocol, the Little Protest was first referred to Purchasing Director Brenda Patel on August 31, 2017, for initial review, and compilation of the required documentation for review by the Parish Attorney. Again, following the established protocol for bid protests, Patel thereafter emailed the Little Protest, and the pertinent bid documents including the bid specifications and addenda, and the bidders’ submissions to Jacques L. Molaison, Sr. Assistant Parish Attorney for his review on September 5, 2017. Upon completion of his review, Molaison advised Little that it was his determination that (1) the rejection of the bid was legally sound and in accordance with applicable State Law, as their bid failed to correctly bid unit pricing as well as total number of units, (2) that Little was misinterpreting State Law regarding his right to receive copies of his competitor’s bid submission at the bid opening; and (3) that a review of Rotolo’s bid submission revealed copies of the required licenses. Directly, on September 6, 2017, Mr. Little of Little Computer Solutions, Inc. telephoned Mr. Molaison to discuss the contents of his protest response, whereon in accordance with the established Jefferson Parish protocol for bid protests, Little was advised that the next course of action was to seek judicial relief in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana. Those rights were confirmed by email from Molaison to Mr. Little of Little Computer Solutions, Inc., dated September 6, 2017.

C. The Thrive Protest.

On September 7, 2017, the Jefferson Parish Purchasing Department received a second protest from Amie Finnan, Project Manager of Thrive of Louisiana, LLC, (hereinafter, “Thrive Protest”), stating in part: “Thrive of Louisiana, LLC would like to contest this bid that has been awarded to Roloto (RCI). The Department of Agriculture does not show that they have a licensed Arborist

on staff at the time of submission and therefore they would not be qualified to perform this project.” Following established bid protest protocol, this protest was forwarded to the Purchasing Director for initial assessment, and thereafter to the Parish Attorney for his review and response. Upon receipt of the Thrive Protest, and upon review of the list of Arborists holding licenses as provided by Department of Agriculture and Forestry, Molaison telephoned Eric Strecker, holder of the arborist license submitted with the Rotolo bid submission. During that phone call when asked whether he was an employee of Rotolo, Strecker replied in the affirmative that he was a part-time employee of Rotolo, and in addition to volunteering that he was a relative of the owners. Thereafter, following established bid protest protocol, Molaison provided an email response to Thrive indicating (1) that it was his determination and finding that the Rotolo submission was compliant with the stated licensing requirements, as Strecker the license holder was an employee of Rotolo as had been indicated in the telephone conversation, and (2) that the next course of action was judicial intervention in the 24th Judicial District Court for the Parish of Jefferson, State of Louisiana.

Analysis and Conclusions.

A. Finding #1.

Jefferson Parish respectfully disagrees with the assertions and conclusions contained in Finding #1 to the Report. The bid specifications for the JPAC Landscaping Maintenance bid merely required bidders to supply the required licenses in the form of copies of said licenses submitted with the bidder’s bid submission. Rotolo as the low bid, supplied said licenses in accord with the Parish’s mandate. Thereafter, due diligence was performed by the Parish Attorney’s Office prior to award, and a judgement call was made based on verbal discussions and oral representations of the license holder as an employee of the bidder. Further it is the Parish’s position that any deviation by the license holder from regulations promulgated by the licensing agency is one for the regulatory body to pursue against the license holder, and not the matter for Jefferson Parish to enforce. Such an undertaking is not cumbersome, but is instead over-reaching.

B. Finding #2.

In 2016, Jefferson Parish logged a total of two hundred twenty-six (226) public bids, with an associated total of only eleven (11) bid protests. For 2017, that year to date total is two hundred twenty-two (222) public bids, with an associated eleven (11) total bid protests. Contrary to the assertions contained in the Report, Jefferson Parish indeed has a bid protest policy, though not reduced to written ordinance to the satisfaction of the Inspector General. This process which is uniformly adhered to for all bid protests includes: (1) receipt, logging and review by the Purchasing Department; (2) referral to the Purchasing Director for initial assessment and collection of pertinent materials, (3) referral to and review by the Parish Attorney, (4) written response to the protesting party, and (5) advising the protesting party of the right to seek judicial intervention. The process is additionally included in written form in the Uniform Instructions to Bidders which accompanies every Jefferson Parish Public Bid procurement. Further, Louisiana Law Public Bid Law provides no mandate of policy or procedure in this regard. As illustrated above and evidenced by the documents reviewed by the Inspector General, the foregoing bid protest procedure was strictly adhered to for both the

Little and Thrive Protests, despite the IG's assertions otherwise which impugn the efforts and integrity of those tasked with safeguarding the public bid process.

The Inspector General's Report graciously provides for consideration the written protest policies from Federal, State and local governments, which the Parish acknowledges that it will consider them with the same professional manner and courtesy in which they were given.

Conclusion.

Based on the foregoing it is the Parish's position that Inspector General Report 2017-0031 lacks merit for the reasons stated herein.

Sincerely,



Michael J. Power
Jefferson Parish Attorney

MJP/jw

cc: Hon. Michael S. Yenni, Parish President
Mr. Keith Conley, COO
Ms. Brenda Patel, Director of Purchasing