



Office of Inspector General
City of New Orleans
525 Saint Charles Avenue
New Orleans, LA 70130-3409
Office: (504)-681-3200 Fax: (504) 681-3230
www.nolaoig.org

March 23, 2010

Honorable C. Ray Nagin
New Orleans City Hall
1300 Perdido Street
New Orleans, LA 70112

Re: Request for Proposals for Alternative Sentencing, Case Management and Related Services

Dear Mayor Nagin:

As you may be aware, the Office of Inspector General has reviewed the two Requests for Proposals (RFP) for Alternative Sentencing, Case Management and Related Services dated August 4, 2009, and February 18, 2010. I am writing today to express my concerns regarding the decision to cancel the August 2009 RFP, the City's failure to provide crucial information to vendors interested in responding to the February 2010 RFP, and the procurement process used to obtain these services in general.

- I. **The City cancelled the August 4, 2009 request for proposals (RFP), thereby rejecting a qualified vendor offering a lower price than the City's current contractor.**

The City issued an RFP on August 4, 2009, seeking proposals to provide a single-piece ankle bracelet monitoring device using active Global Positioning System (GPS), twenty-four hour monitoring service and support, and case managers to provide screening, enrollment, monitoring and reports for the courts. Proposers were asked to submit prices for various levels of monitoring for Juvenile Court, Municipal Court, and Criminal/Magistrate Courts on a per participant, per day basis.

The Department of Homeland Security and Emergency Preparedness requested assistance from various individuals who work in the Criminal Justice system to evaluate the six proposals received in response to the August 2009 advertisement. Three individual evaluations were conducted, each using the same "Rating Criteria Matrix." Each proposal was given a score out of 100 possible points according to five criteria, including specialized experience and technical competence. The average scores for the six proposers were as follows:

<u>Vendor:</u>	<u>Score:</u>	<u>Cost per person per day:</u>
Orleans Parish Criminal Sheriff's Office	89	\$9.00 - \$12.00
G4S Justice Services, Inc.	73.5	\$13.75 - \$13.83
Henry Consulting	65.66	\$14.28 - \$15.00
Sunex Holding Corp. (d/b/a TSAP)	63.66	\$14.75 - \$30.00
Technology Based Corrections, LLC	63	\$10.50 - \$12.50
Louisiana Intensive Supervision & Tracking	61.42	\$14.50 - \$18.50

On December 7, 2009, the Director of Homeland Security and Emergency Preparedness sent a memorandum to the Chief Administrative Officer recommending the contract be awarded to the Orleans Parish Criminal Sheriff for the following reasons:

- " (1) They have the highest total number of evaluation/rating points (89).
- (2) They have the most responsive and best submittal, as determined by ALL the evaluators.
- (3) They work closely with the courts which should act to their ability to easily perform these duties.
- (4) They have the lowest unit cost schedule submittal."

Despite the recommendation, the City did not award a new contract. Instead, on January 11, 2010, the City sent a letter informing each of the respondents that the RFP had been cancelled without providing any reason for the cancellation.

On February 24, 2010, the OIG requested "[a]ny and all correspondence or documentation relating to the cancellation of the [August] 4, 2009 RFP." The OIG received a response from the Chief Administrative Officer on March 11, 2010. After reviewing the emails and documents provided by the City, we found two vague references to the cancellation of the first RFP. The most detailed of the two stated the "City Attorney had issues with deviation from the Mayor's Exec Order during the selection process." This concern may refer to the Director's decision to use a selection panel after Executive Order CRN 09-01 abolished all panels to avoid the open meetings law.

II. The City's February 18, 2010 RFP and the City's Response to Vendor Questions did not provide necessary information for vendors to compete fairly for the contract.

On February 18, 2010, a new RFP was advertised for the same services included in the August 2009 RFP. The only change from the August 2009 RFP was to the "Cost Submittals" attachment asking respondents to provide an annual cost for each of the three courts using the electronic monitoring service, rather than submitting a cost per participant per day for each court based on the level of monitoring provided. While Attachment "F" of the August 2009 RFP requested a per participant/per day breakdown of cost according to five different areas (i.e. Municipal, Criminal and Magistrate, and Levels 1, 2, and 3 in Juvenile Court), the February 2010

RFP calls only for an **annual** cost for Juvenile Court (providing no distinction between levels), Municipal Court, and Criminal/Magistrate Court. This change undermines fair competition for this public contract.

There are different levels of monitoring, each imposing a unique cost on the service provider according to the number of clients served. The February 2010 RFP poses great difficulty for a potential bidder to estimate the actual cost because the mix and volume of participants determines the cost. A potential vendor affirmed this concern when it submitted the following question on or before March 4, 2010:

“If this is an existing program, would the City please provide an estimated range of the number of clients monitored over the last year in the Juvenile Court program; the number of clients monitored over the last year in the Municipal Court program; and the number of clients monitored over the last year in the Criminal/Magistrate Court program?”¹

The City’s unresponsive reply was: “Range 2,500 to 3,500 clients for all courts listed above.”²

According to the cost submittals in response to the August 2009 RFP, costs can differ by as much as \$15 per person per day, depending on the court, and as much as \$11.50 per person per day by level of monitoring for Juvenile Court. Therefore, the City’s answer, which does not break down the estimated range by type of court and level of monitoring, unfairly discriminates against vendors who do not have inside information because they cannot accurately estimate the number to be monitored in each category. In addition, the range of 2,500 to 3,500 is even more misleading when considering the total number of units in a year; a unit being per person per day. The total number of units for 2009 exceeded 100,000. Only those vendors who are privy to the number of participants monitored for each court at each level over the previous year will be able to provide a realistic estimate. The City failed to provide the relevant information to all prospective bidders.

Additionally, the City’s responses to several other questions posed by potential bidders regarding the February 2010 RFP were not helpful and were unfair to the bidders by excluding important information. For example, a vendor asked for the current cost charged to the City and the response was “N/A.” This information is in fact available and is a public record that should be provided upon request. The City’s refusal to provide relevant information that would enable competing vendors to develop accurate cost estimates could lay the groundwork for a legal challenge to the process as a whole.

The function of monitoring individuals throughout all phases of the criminal justice system (pre-trial through post-conviction) is arguably an inherently governmental function. However,

¹ See attached “Questions Regarding RFP No. 2258-00889.”

² *Id.*

such services are sometimes outsourced to private firms when cost savings can be demonstrated. In this case, the Orleans Parish Sheriff's office submitted the lowest costs by far, as well as the most responsive submission as articulated in the evaluations of the proposals received in response to the August 2009 RFP.

III. Alternative Sentencing, Case Management and Related Services are not "professional services" and thus not exempt from Public Bid Law.

I do not believe the services for which the City requested proposals qualify as "Professional Services" as defined by and subject to Executive Order CRN 09-01, under the standards established by the Louisiana Supreme Court. The definition of "professional services" requires specialized education, experience, or training in the practice of an art or attainments in special or professional knowledge that can be distinguished from skill. In *Council of City of New Orleans v. Morial*,³ the City Council sought to declare a contract for administering the City's employee health care plan to be "professional services," thus exempting it from Public Bid Law. The Fourth Circuit Court of Appeal held that the services were primarily administrative, not professional, and therefore not exempt from Public Bid Law under the Home Rule Charter.⁴ The Louisiana Supreme Court adopted this analysis in *New Orleans Rosenbush Claims Service, Inc. v. City of New Orleans*,⁵ when the Court determined that a request for "administrative services" for the City's self-funded workers' compensation program were "primarily administrative or clerical" and not professional services; therefore, the contract was not exempt from public bidding laws under the Home Rule Charter.⁶

The services requested in both the August 2009 and February 2010 RFPs for Alternative Sentencing, Case Management and Related Services are primarily administrative and technology based. Case managers must screen, enroll, monitor, and report participant activity. Case managers are not required to have any level of specialized education or training and the tasks required can be performed by individuals with a high school education. The electronic monitoring services depend mostly on the technical ability of the equipment to monitor an individual's activity with specific frequency. The ability to receive and examine the data collected by the equipment does not require professional education, specialized skill, or extensive training. There are no requirements in the services requested necessitating a level of professional knowledge or training as described in Executive Order CRN 09-01. Therefore, these services should not be exempt from the Public Bid Law under the Home Rule Charter for the City of New Orleans Section 6-308(5). The contract for electronic monitoring services, regardless of the name under which it is submitted, should be competitively bid and awarded to the lowest responsive and responsible bidder.

³ 390 So.2d 1361 (La. App. 4th Cir. 1980).

⁴ *Id.* at 1364.

⁵ 653 So.2d 538 (La. 1995).

⁶ *Id.* at 547.

Since 2006, the City has paid more than \$4.7 million for electronic monitoring services and the cost per participant per day has almost doubled in less than four years⁷. Given the City's current economic circumstances, it is critical to make every effort to obtain the best possible deal for taxpayers under the new contract. For these reasons, I recommend that the City terminate this flawed procurement and advertise for bids to award a contract for future services to the lowest responsive and responsible bidder.

Sincerely,



E.R. Quatrevaux
Inspector General

cc: Dr. Brenda Hatfield
Penya Moses-Fields
Lt. Col. Jerry Sneed

⁷ From January 2006 through February 2007, the rate was \$7.75 per person per day. By late 2008, the rate was increased to \$14.75 per person per day.

Questions Regarding RFP No. 2258-00889

Alternative Sentencing, Case Management and Related Services

1. Are vendors required to bid to provide services for all three courts (Juvenile Court, Municipal Court, and Criminal and Magistrate)?

Yes

2. Will the City please confirm that this is an existing program?

Yes

3. If this is an existing program, would the City please provide an estimated range of the number of clients monitored over the last year in the Juvenile Court program; the number of clients monitored over the last year in the Municipal Court program; and the number of clients monitored over the last year in the Criminal/Magistrate Court program?

Range 2,500 to 3,500 clients for all courts listed above

4. For each of the requested court programs, what is the current yearly/monthly/daily cost that the City is charged?

N/A

5. For each of the requested court programs, will all referred clients be monitored with a single-piece GPS tracking system?

Unknown, to be determined by submission

6. For each of the requested court programs, will the City please define the eligibility requirements for referred clients?

To be determined by the Courts

7. For each of the requested court programs, will the City please provide an estimate on the number of individuals the vendor is expected to screen each day? What audit process will be in place to ensure that there is no conflict of interest for vendors screening clients for referral to their own program?

Unknown, in both cases, the Courts make the final determination

8. Will the awarded vendor be required to provide face-to-face contacts or other supervision duties for any of the requested court program outside of Orleans Parish? If so, please define this area. Is the awarded vendor required to operate any satellite offices?

Vendors will be required to provide services outside of Orleans Parish, though not required to operate satellite offices

9. For each of the requested court programs, will the City please provide an estimate on the amount of hours the vendor's staff is expected to remain in court each day in order to fulfill the described duties?

Unknown

10. For each of the requested court programs, will the City please provide an estimate on the current percentage of clients in compliance with the terms of the program versus the percentage of clients who are non-compliant?

N/A

11. On page 6 of the RFP, one of the listed vendor requirements for Level 2 and Level 3 of the Juvenile Court program includes "mandatory employee dispatch to real time location of non-compliant RAI release; provide counseling to the child and parent." Will the City please define what RAI release is? Will the City also define the type of counseling expected to be provided by the vendor in connection with non-compliant RAI releases?

RAI is Risk Assessment Instrument

Instructions are to be given by the judge to the vendor

12. On page 7 of the RFP, one of the listed vendor requirements for the Municipal Court program is the provision of transport for all referrals from Court or the Orleans Parish prison to the vendor's office for equipment installation. Will the City please clarify the amount of time associated with these transportation expectations? Is the vendor required to transport client's daily/hourly/upon request?

Unknown, to be determined by the Courts

13. On page 8 of the RFP, one of the listed vendor requirements for the Criminal/Magistrate Court program is that vendor staff confirms client violations via phone, and then make a home visit if they are unable to establish phone contact with the client. How much time can elapse between a vendor's inability to reach a client by phone and the vendor's performance of the required home visit?

Unknown to be determined by the Courts

14. How long will the awarded vendor have to implement/transition this program after the contract is signed?

This matter can be negotiated

15. Attachment F, Cost Submittals asks vendors to provide the total cost for each of the requested court programs. Will the City please specify how vendors should calculate the total cost for each court?

The number of clients and Level of service, all to be determined by the Courts

16. Does the City expect to post all received vendor questions and the corresponding answers on its purchasing website in order to ensure that all interested vendors are able to view all questions submitted during this procurement process?

Yes

17. On page 4, under **Electronic Monitoring Equipment**, the City requests that the GPS unit provide indoor and outdoor tracking of the individual. Can the City please clarify what technology/which technologies are acceptable as indoor tracking solutions? To what accuracy is a GPS tracking point required to be collected indoors?

I can not clarify anything beyond what is in the RFP.

18. On page 4, under **Electronic Monitoring Vendor Requirements**, the first paragraph states that once a client "violates a condition of his release, the ping or location interval must be increased to every sixty seconds." Will the City please specify the types of violations that will require this increased rate of reporting, outside of those discussed as "instant alerts" in the following paragraph?

These violations are determined by the Court and vary from time to time.

19. On page 4, under **Electronic Monitoring Vendor Requirements**, the City requests GPS reporting intervals of once every fifteen minutes during compliance and once every sixty seconds during violation. At what rate does the unit need to collect GPS points?

I can not clarify anything beyond what is in the RFP.

20. On page 5, under the operating guidelines for the New Orleans Juvenile Court, the RFP states that "Case Managers must attend the continued custody hearings, ATD hearings, or appear at Juvenile Bureau." Will the City please provide a definition of ATD hearings?

Alternative to Detention. This hearing is to determine if the custody or monitoring or other action is acceptable to the Court. Each hearing is set by the Court.

21. Will any of the case management services required by the RFP include tracking a client who might be an illegal alien through immigration proceedings?

No