



Joseph M. Centorino, Inspector General

TO: Honorable Mayor and Members of the City Commission
FROM: Joseph M. Centorino, Inspector General
DATE: February 7, 2022
RE: Contract Oversight--Complaint from CBRE, INC. RE: REAL ESTATE
PROCUREMENT & CONSULTING SERVICES CLASS "A" OFFICE SPACE –
PUBLIC PRIVATE PARTNERSHIP (P3) NEAR LINCOLN LANE
OIG No. 21-44

COMPLAINT

On May 4, 2021, the Office of Inspector General (OIG) received a complaint from Attorney Robert H. Hosay, of Foley & Lardner LLP, representing CBRE, Inc. (CBRE), the holder of a City contract since October 24, 2017, to act as the City's real estate consultant and to complete and asset inventory of the City's underutilized real estate assets. The complaint followed the City's Request for Proposals (RFP) in connection with City-owned parking lots in the vicinity of Lincoln Road, in which bids were received from CBRE (\$375,000), Jones Lang LaSalle Americas, Inc. (\$300,000) and Colliers International Florida (Colliers) (\$15,000). The Colliers proposal was accepted by the City.

Mr. Hosay's complaint stated that, "The contract that the City already has with CBRE – which was competitively procured through a formal bidding process – contains within its scope the real estate consulting services, including potential development of an RFP, that were sought through this Procurement. This fact raises serious questions regarding why City staff felt that a new, informal procurement should be run to secure services that the City has already contracted for." Mr. Hosay raised other questions regarding the propriety of the procurement, the most significant focusing on the disparity in the bid amounts between the Colliers' bid and the other two bids and suggesting that Colliers would expect to be compensated in other ways, considering the "significant work" that would be necessary to fulfill the contract.

BACKGROUND

On December 11, 2019, the City Commission discussed the possibility of making available surface parking lots North of Lincoln Road to developers to promote the development of Class "A" office space in the city center area. To gauge interest from the development community, the City Commission directed staff to issue a request for letters of interest for the development of Class "A" office space on surface parking lots P25, P26 and P27. On October 9, 2020, the Administration issued Request for Letters of Interest 2021-029-KB seeking expression of interest from developers interested in building Class "A" office developments on the surface parking lots

P25, P26 and P27 immediately North of Lincoln Road. The RFLI yielded significant interest, including expression of interest from eighteen (18) respondents.

Based on the results of the RFLI, on February 19, 2021, the Finance and Economic Resiliency Committee ("FERC") recommended that the Administration seek City Commission authorization to prepare a Request for Proposals (RFP) for the development of Class "A" office space on the three surface lots. On February 24, 2021, the City Commission discussed the FERC recommendation and the results of the RFLI and directed the Administration to include the 17th Street parking garage (parking garage G5) in the forthcoming RFP.

The Procurement Department provided review of the request, entitled, 'Proposal Request for Real Estate and Procurement Consulting Services in relation to City of Miami Beach RFP for Class 'A' Office Space Public Private Partnership (P3) near Lincoln Lane. This request was sent via email from the Economic Development Department on March 10, 2021, to CBRE and other real estate consulting firms.

On March 17, 2021, the City Commission adopted Resolution No. 2021-31617, authorizing preparation of an RFP for mixed-use development, incorporating Class "A" office space at four City-owned sites along Lincoln Lane North, including the 17th Street parking garage (G5). On June 23, 2021, the City Commission authorized issuance of RFP 2021-173-KB for Mixed-Use Developments Incorporating Class "A" Office Space on City-Owned Parking Lots P25, P26, P27 and Parking Garage G5. As part of its contract, Colliers provided the requested real estate consulting services, which entailed assisting the City in drafting a formal RFP.

On June 23, 2021, the City Commission authorized issuance of RFP N. 2021-173-KB – Mixed-Use Developments Incorporating Class "A" Office Space on City Owned Parking, which was issued on June 26, 2021, via Periscope P2G, the City's vehicle for issuing solicitations. Responses are due by 3:00 PM on January 12, 2022. CBRE received an invitation to respond. After the solicitation closes, an evaluation committee is set to convene on February 1, 2022. The Committee will then make a recommendation to the City Commission for award of the contract, based on the criteria in the solicitation.

OIG REVIEW

The OIG conducted an initial inquiry into this matter that did not reveal any apparent impropriety or misconduct on the part of the City, but also monitored the execution of the contract due to the concerns raised by CBRE about the unusual disparity between the successful bid and the others.

OIG Contract Oversight Consultant, Jill Klaskin Press, emailed and/or spoke with Alex Denis, CMB Procurement Director, Kristy Bada, CMB Purchasing Agent of record for the project, Rickelle Williams, Economic Development Director, and Ken Krasnow, Vice Chairman, Colliers International Florida, in order to provide the following responses to specific questions posed in the letter from Foley & Lardner LLP, on behalf of CBRE, Inc.

CBRE question:

Why would it be necessary, or advisable, for the City to hire a second firm to provide services that are entirely duplicative of those it already has CBRE under contract for, in a contract that was competitively procured and approved for renewal by the Mayor and City Commission as recently as September of 2020?

CMB response:

Page 30, #5 of the "Special Conditions" of the referenced solicitation document, RFQ 2016-152-WG, entitled, REAL ESTATE BROKERAGE SERVICES, contained the following clause:

5) NON-EXCLUSIVITY.

It is the intent of the City to enter into an agreement with the successful Bidder that will satisfy its needs as describe herein. However, the City reserves the right as deemed in its best interest to perform, or cause to be performed, the work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to award of other contracts, use of any contractor, or perform the work with its own employees

CBRE question:

Why was the "Procurement" referred to as a "proposal request" rather than one of the recognized types of public procurements such as a "Request for Proposals"?

CMB response:

A Request for Proposals (RFP) typically means a formal competitive solicitation above an agency's formal bid threshold. The City's formal bid threshold for these services is \$100,000. As the staff of the Economic Development Department did not believe proposals would exceed this threshold, a formal competitive solicitation was not required.

CBRE question:

Why was the "Procurement" conducted in such a rushed manner, with respondents being given only two and a half business days to submit proposals for how they could assist the City with a construction project that one commissioner referred to as "a once in-a-generation opportunity"?

CMB response:

The short notice between the March 10th issuance and asking the Commission to approve an RFP solicitation, was due to the next Commission meeting being held on the March 17, 2021. At that meeting, the City Commission adopted Resolution No. 2021-31617, authorizing preparation of an RFP for mixed-use development incorporating Class A office space at four City-owned sites along Lincoln Lane North, including the 17th Street parking garage (G5). The Administration believed it was important to secure a consultant to assist with the development of the RFP as soon as possible, because the City Commission had expressed its desire to review the RFP at its April 21st Commission meeting.

CBRE question:

Why does the cost of Colliers' proposal differ so drastically from that submitted by the other vendors? How does Colliers intend to be compensated for the significant work that it would be asked to perform under a resulting contract?

CMB response:

This is not a question that can be responded to by the City, as a vendor is entitled to propose any dollar amount they wish to provide, however, staff contacted Collier International to confirm their pricing, and they replied, "We have reviewed the proposal that our team submitted on March 15, 2021 and have re-confirmed that the proposal accurately outlines our services and that we are committed to performing the tasks identified for the stated fee of \$15,000." As of this date, Colliers International Florida has performed the requirements of their contract and continues to fulfill their obligations under

the terms and conditions of its agreement with the City.

The OIG Contract Oversight Consultant spoke with Procurement and Colliers personnel and examined documents in connection with Colliers' performance of its contract with the City, in order to determine the circumstances of the bid disparity. It was found that Colliers, in connection with its preparation pursuant to the contract, of RFP 2021-173 for development of City-owned Lots and Garage, had included language in its financial proposal to the City on the RFP that would have provided Colliers with an "advisory fee" equal to 4% of the appraised value of each City site.

Because this was not part of Colliers' original bid to the City, the proposed language was not approved by the Procurement Director, Alex Denis. That led to an email from Ken Krasnow at Colliers to Denis and the City's Economic Development Director, Rickelle Williams, in which Krasnow, apologizing for "the confusion with regard to the added RFP fee language," gave the answer referenced in the final City reply to CBRE's complaint, as noted above, that it was reconfirming its original bid proposal and would perform the tasks required under its contract for \$15,000.

The OIG has confirmed with Ms. Williams that Colliers has been fulfilling its responsibilities satisfactorily in compliance with the contract. The solicitation closed on January 12, 2022, and an evaluation committee convened on February 1, 2022. As a result of Colliers's participation in developing the criteria for the solicitation, three viable proposals were reviewed by an Evaluation Committee and the results will be sent, as a recommendation, to the City Commission for award of the contract. Colliers has additional responsibilities remaining to be completed under the terms and conditions of its contract, and the OIG will continue to monitor the progress of this project and Colliers's performance of the contract terms.

In response to the OIG Draft Report, CBRE's attorney reiterated its claims in the attached correspondence, questioning the propriety and legality of the procurement process, the performance of Colliers under the contract, and whether City staff had acted in the best interests of the City. CBRE maintains that it should have been awarded the contract, but has submitted no further evidence in support of that claim.

The OIG has consulted with the City Attorney, who has confirmed the City's position that the City has no obligation to issue competitive solicitation for goods and services valued under \$100,000, which was what the City intended by issuing an informal RFP; and that, based on past Florida Court rulings, the City has wide discretion in the bidding process to act as it did in this instance. He noted that CBRE failed to cite a single code provision, statute or case in support of its claim that it should have issued a formal competitive solicitation.

CONCLUSION

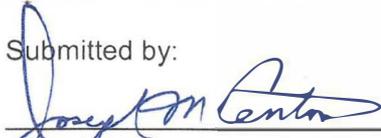
This review was opened based on the significant discrepancy among the bids received on this contract, and concerns raised by CBRE's attorneys regarding whether the contractor could honor the contract at the \$15,000 bid price. What appeared to be an attempt by Colliers to depart from the terms of its bid in the contract preparation stage by inserting a 4% "advisory fee" was properly rebuffed by the City. In the course of this review, the OIG has found no evidence of fraud, waste or abuse by the City departments involved in the procurement process.

After speaking with staff of the Procurement and Economic Development Departments, as well as Colliers International Florida, and after review of the issues raised in the Foley & Lardner LLP

correspondence with the Inspector General submitted on behalf of CBRE, the OIG found that City Administrative staff members acted in good faith and in the best interests of the City. Its performance in this matter in ensuring that Colliers adhered to its original bid proposal may have saved the City nearly \$300,000, for which they should be commended.

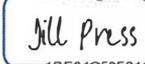
The complaint of CBRE regarding the City's procurement in this matter, though based on an admittedly unusual disparity in the original bid amounts, is unsubstantiated and this inquiry is concluded. The OIG will monitor further performance of the contract as necessary.

Submitted by:



Joseph M. Centorino
Inspector General

02/07/2022
Date



Jill Klaskin Press
Contract Oversight Consultant

2/7/2022 | 12:53 PM EST
Date

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January 31, 2022

Via E-Mail

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Re: CBRE's Response to Draft Report OIG No. 21-44

Dear Mr. Centorino,

As you are aware, Foley & Lardner LLP represents CBRE, Inc. ("CBRE") in connection with the City of Miami Beach's "Proposal Request for Real Estate and Procurement Consulting Services in relation to City of Miami Beach RFP for Class A Office Space Public Private Partnership (P3) near Lincoln Lane" (the "Proposal Request") published on March 10, 2021. We are in receipt of your letter dated December 15, 2021 that enclosed a copy of Draft Report OIG No. 21-44 (the "Report") and permitted a written rebuttal of the findings in the Report by January 31, 2022. Accordingly, please accept this letter as CBRE's written response and rebuttal to Draft Report OIG No. 21-44.

While CBRE appreciates the Office of Inspector General's (the "Office") review of the issues raised by CBRE in its letter dated May 4, 2021 (a copy of the letter is enclosed) regarding the Proposal Request, CBRE respectfully disagrees with the findings in the Report. The Report's findings are directly contrary to procurement law and undermine the long-standing policies that are fundamental to government procurements. Indeed, the Report does not seriously dispute that the City acted in violation of its procurement code but rather attempts to justify its improper actions by saying that the City got a good deal. It is clear from the findings of the Report that the City is expending public funds in a manner that does not have the best interest of its taxpayers and residents in mind.

CBRE rebuts the findings in the Report for several reasons. First, the *Background* section of the report fails to include key facts that are germane to the various issues with the City's Proposal Request. The *Background* provides a timeline of the events that gave rise to the City's improper Proposal Request. However, this timeline fails to include a fact that should have been key to the Office's investigation: that the City already had a contract that covered the same services. Accordingly, CBRE provides a summary of the relevant background information based on its own

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knowledge of the timeline and the facts provided in the Report, and including key facts omitted from the Report.

On October 24, 2017, the City entered into a contract with CBRE to provide real estate consultant services. This contract was competitively procured through a formal bidding process in accordance with the City's procurement code, which allowed the City to make a like kind comparison of the vendors that proposed to provide the services and to make an appropriate determination of which vendor offered a combination of the best services at the best price and was best able to serve the City and its residents and taxpayers. After completing this thorough vetting process through a competitive procurement, the City selected CBRE as the vendor that best met the City's needs. After three years of service from CBRE under the contract, the Mayor and the City Commission approved a one-year renewal of the contract during the September 29, 2020 meeting, allowing the City to continue using CBRE's services under the contract until October 23, 2021.

After the City Commission discussed the possibility of developing surface parking lots north of Lincoln Road in December 2019 (based at least in part on the data CBRE presented to the City Commission's Land Use and Sustainability Committee on potential zoning incentives to develop Class A office space in strategic parts of the City), issued a request for letters to developers to gauge interest in October 2020, and recommended the development of a formal request for proposals ("RFP") for the actual development of the lots in February 2019, the City's Economic Development Department ("Department") inexplicably issued the Proposal Request to procure a consultant to assist in the drafting of the RFP.

The Proposal Request was emailed to CBRE and other real estate consulting firms including Alvarez, Aiguesvives & Associates, Colliers International Florida ("Colliers"), Cushman and Wakefield, Jones Lang LaSalle Americas, Inc., Sidewalk Labs, and Walter Duke and Partners. The Proposal Request was unusual given the highly informal nature of the procurement, which was described by one of the other bidders as a "highly atypical procurement," and was especially perplexing given that the City already had a contract with CBRE that covered the consultant services the City needed to support the development of the RFP. As the City already had a contract with CBRE that would have covered the needed services, the contract ultimately procured by the Proposal Request would be entirely duplicative.

The Proposal Request was especially atypical given that it provided the bidders only two and a half business days to submit proposals. The Department received three proposals:

- CBRE proposed \$375,000 plus 0.95% of the project value paid by the developer
- Jones Lang LaSalle Americas, Inc. proposed \$300,000 plus 0.25% of development costs paid by the City

- Colliers proposed \$15,000

Despite the majority of the proposals being over \$300,000 (significantly exceeding the threshold of \$100,000 that would permit the City to use an informal bidding process rather than a formal competitive bidding process), the Department continued to conduct its improper informal procurement and ultimately awarded the contract to Colliers. On March 15, 2021, the Department asked Colliers to confirm its pricing to which it supposedly responded that “We have re-confirmed that the proposal accurately outlines our services and that we are committed to performing the tasks identified for the stated fee of \$15,000.”

On March 17, 2021, 7 days after the Department emailed the Proposal Request, the City Commission authorized the issuance of the RFP. Colliers provided the real estate consulting services for that RFP pursuant to its contract award from the Proposal Request. It was later found that Colliers had subsequently included an “advisory fee” equal to 4% of the appraised value of each City site for its services, a fee that was not originally submitted in its proposal in response to the Proposal Request or disclosed when asked by the City to reconfirm its pricing. Despite Collier’s unlawful addition of a fee after the Procurement Director had already approved the contract, the City took no appropriate action to correct its execution and performance of an improper contract with Colliers.

Second, while the Report addresses some of the questions raised by CBRE in the section of the Report entitled *OIG Review*, the Report failed to address all of the questions submitted by CBRE. Moreover, the answers provided to the questions that were addressed in the Report did not quiet CBRE’s concerns with the Department’s Proposal Request but instead revealed even more improprieties in the City’s actions.

The Report first addresses CBRE’s question as to why it was necessary or advisable for the City to hire a second firm to provide services that were entirely duplicative of those covered under the existing contract with CBRE. In response, the Report simply cites to a provision of the contract with CBRE that states “the City reserves the right as deemed in its best interest to perform, or cause to be performed, the work and services, or any portion thereof, herein described in any manner it sees fit, including but not limited to award of other contracts, use of any contractor, or perform the work with its own employees,” with no further explanation. Despite the City’s reservation of the right to procure another contract for the services, that right was limited to when the City “deemed in its best interest” to procure a duplicative contract. There has been no indication that the City ever analyzed whether it was in the City’s best interest to procure another contract for the services or whether any formal best interest decision was made before the Department issued the Proposal Request.

In addition, it was actually not in the City’s best interest to issue the Proposal Request. Because the City already had a contract that covered the services that was competitively procured through lawful channels and included a thorough vetting of the vendors and an appropriate comparison of the vendors and their proposals to determine which vendor could offer the best quality of services at the

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best possible price, it was not in the best interest for the City to rush through an informal procurement without the protections and benefits afforded to the City through a competitive procurement. Moreover, it was not in the best interest of the City to give bidders only two and a half business days to review the scope of work and determine what they needed to propose. It was also not in the best interest of the City to disregard its current contract with CBRE, who has extensive experience working with the City and unique expertise relating to the subject matter of the RFP given CBRE's previous work for the City, for a vendor who has less experience with the City. It was further not in the City's best interest to select a contract that was 95% cheaper than any of the other proposals especially without sufficient time for the Department to thoroughly determine whether that price could support full contract performance. The Department was *derelect in its duties* and put the City and its taxpayers and residents at significant risk by selecting a proposal that plainly could not responsibly support full performance of the contract and increased the potential for a default and the need to expend more public funds on replacement services.

Next, the Report addresses CBRE's question as to why the procurement was referred to as a "proposal request," rather than a recognized type of government procurement such as a request for proposal. The Report answers that requests for proposals are formal competitive solicitations above the bid threshold of \$100,000. The Report goes on to say that "As the staff of the Economic Development Department did not believe proposals would exceed this threshold, a formal competitive solicitation was not required." Based on the scope of work for the contract, it was not logical for the Department to have concluded that proposals would not exceed \$100,000. The contract required two "Tasks" of the contractor, (1) to analyze properties and formulate marketing of an RFP and analyze proposals submitted in response to the RFP and (2) to assist the City with due diligence, detailed analyses, and the formulation and development of a lease agreement. To perform these Tasks in accordance with the specifications set by the Department and throughout the entirety of the term of the contract, \$100,000 would have clearly been insufficient. Regardless, even if the Department could rationally and logically conclude that such a contract would cost less than the \$100,000 threshold, once the Department received the three proposals demonstrating that the majority of the proposals would cost more than the threshold and the lowest price proposal was a clear outlier, the Department should have cancelled the procurement and either utilized its existing contract with CBRE or conducted a re-bid using a formal competitive procurement to comply with the City's procurement code.

The Report then addresses CBRE's question regarding why the procurement was conducted in such a rushed manner especially given that the selected vendor would be assisting the City with a construction project that the City Commission described as a "once-in-a-generation opportunity." The Report answers that the short notice was due to the City Commission having its next meeting on March 17, 2021, in which it was to consider approving the issuance of the RFP, and the Department felt they needed to select a consultant as soon as possible since the Commission expressed its desire to review the completed RFP by the April 21, 2021 meeting. If the Department was truly concerned about the short time period to obtain a consultant that could prepare the RFP by the April 21st meeting, the

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Department had a simple solution: to use the contractor that was already engaged by the City to provide these services. Had the Department utilized the City's existing contract, which was not set to expire until October 2021, the Department would have instantly had a consultant available to develop the RFP prior to the April meeting without having to waste any additional time in conducting a procurement, even the extremely rushed and limited informal procurement the Department did conduct.

Lastly, the Report addresses CBRE's question as to why Colliers' proposal differed so drastically in price than the other vendors' proposals and how Colliers was expected to be compensated for the work. The Report simply replies that the Department asked Colliers to confirm its price and Colliers confirmed that it would perform the work for the \$15,000 fee. However, after the significant price disparity was raised by CBRE, the OIG Contract Oversight Consultant discovered that Colliers had subsequently inserted a 4% advisory fee equal to 4% of the appraised value of each City site. This additional advisory fee was not part of Collier's original proposal and was not disclosed when the Department asked Collier's to confirm its price. Had the 4% fee been appropriately included in Colliers' proposal, the Department would have determined that Colliers' proposed price was actually significantly more expensive than CBRE's proposal.

This 4% advisory fee is standard in Colliers' proposals. Indeed, the 4% advisory fee has been included in Colliers' previous proposals, including its proposal to the City of Dania Beach, where Rickelle Williams, the City's Economic Development Director, was previously employed and would have been exposed to Colliers' standard 4% fee. Moreover, assuming that personnel performing the contract have a rate of approximately \$300 an hour, which is a standard rate for this type of work and the level of expertise needed, \$15,000 would have covered one person's work for only 50 hours of work. Thus, it was not logical for the Department to have selected Colliers' proposal without more due diligence into how Colliers expected to be compensated because the scope of work for the contract certainly could not have been performed by one person in about a week's worth of work. As such, the Department should have known that the \$15,000 would not be the only way that Colliers would be expected to be compensated for the numerous hours of work and expertise required to perform the contract.

The Report does not address the rest of CBRE's questions. The Report did not answer whether it was the City's typical practice to require proposals for complex services be submitted in less than three business days. Presumably, the Report does not address this question because it is not the City's typical practice to have conducted an informal, on short notice, and rushed procurement for a significant piece of work, and that a formal competitive procurement should have been utilized. The Report also does not address whether the City staff had an understanding of the estimated total cost of the project before choosing to conduct an informal procurement or why the City did not use a formal bidding process given that the majority of proposals exceed the \$100,000 threshold. The Report also does not address how the Department assessed the proposals it received and whether scoring documents would be made available. To date, 8 months after CBRE submitted its letter, the City has

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not provided CBRE with records relating to the Proposal Request. The Report's failure to address these questions and to provide adequate answers to the questions only further creates the appearance of impropriety in the City's procurement and Colliers' performance of the contract.

Third, the Report then goes on to explain how the Office discovered Colliers' subsequent addition of a 4% fee in addition to its initially proposed cost of \$15,000. The Report explains that when the Department addressed the 4% fee with Colliers, only then did Colliers retract its 4% fee and stated that it would perform the required tasks in compliance with the contract for the \$15,000 without the fee. This begs the question that had CBRE not brought the issues with the Department's procurement and selection of Colliers' proposal to light, if the City would have ever discovered that the true cost of selecting Colliers was significantly higher than that proposed by CBRE or Jones Lang LaSalle. Regardless of whether Colliers subsequently agreed to perform the contract at its originally proposed price (and likely at a substantial monetary loss given the amount of work required to perform the contract), the City's procurement and selection of Colliers, and Colliers inclusion of additional costs outside of its original proposal was unlawful and governing procurement law required the contract be voided.

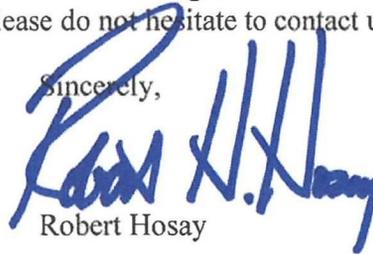
Lastly, the Report ends with a *Conclusion* that finds that the "City Administrative staff members have acted in good faith and their performance in this matter in ensuring that Colliers adhere to its original bid proposal may have saved the City \$300,000 or more, for which they should be commended." The Report also concludes that CBRE's complaint "is unsubstantiated and this inquiry is concluded." This conclusion is erroneous given that the facts presented in the Report (and as supplemented by the facts presented herein) – that the Department did not conduct a formal procurement when the proposals would exceed the informal bidding threshold and Colliers' subsequent inclusion of an additional fee outside of its original proposal and that was not approved by the Procurement Director – affirmatively demonstrate that the City did not comply with its own procurement code and selected a non-responsible vendor to perform the contract, which is in violation of procurement law and policy and required that the contract be voided. Unfortunately, the City's conduct does not inspire public confidence in the integrity of the bidding process and these actions taken in violation of the procurement code and procurement law should not be commended.

In sum, the City had an existing lawful solution to its imminent needs by engaging CBRE to perform the consultant services for the RFP under the current contract. For reasons still unknown, instead of utilizing its previously competitively procured contract, the City conducted a procurement that was not in accordance with its procurement code and selected a vendor that subsequently included a hidden cost for its services, ultimately making it a more expensive vendor. These actions plainly violate procurement law and policy and call into serious question the integrity of the City's bidding processes.

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Thank you for your consideration of this response to the Draft Report. We are hopeful that you will reconsider the findings of the Report and its resulting conclusion. If you have any questions or would like to discuss this matter further, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert N. Hosay", is written over the typed name. The signature is stylized and cursive.

Robert Hosay