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Governor

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State Surgeon General

INTEROFFICE MEMORANDUM

DATE: November 12, 2009

TO: Gary J. Mahoney, Director, Division of Administration

THROUGH: James D. Boyd, C.P.A., M.B.A., Inspector General

THROUGH: Michael J. Bennett, C.I.A., Director of Auditing

FROM: Mark H. Boehmer, C.P.A., Senior Management Analyst II

SUBJECT: Report No. AR-10-003 – *Review of Department of Health's Use of Non-Competitive Procurement Contracts*

INFORMATION ONLY

Introduction

We reviewed the use of non-competitive procurement contracts at Department of Health (DOH) above the threshold of Purchasing Category Two, or \$25,000, as provided by Section 287.017, *Florida Statutes*. We included purchase orders initiated during the fiscal year ended June 30, 2009 and written agreements intended to be in effect as of July 1, 2009. We focused on the use of the Health Services Exemption and Sole Source exception.

We also reviewed the *Documentation for Noncompetitive Procurement (Form)* for eight purchase orders and 43 written agreements, for a total of 51 contracts to determine whether DOH as a whole appropriately justified the use of the Health Services Exemption and Sole Source exception with adequate written justification. DOH as a whole appropriately justified the use of the Health Services Exemption and Sole Source exception with adequate written justification.

Section 20.055(2), *Florida Statutes*, charges each Office of the Inspector General responsibility to provide a central point for coordination of activities that promote accountability, integrity, and efficiency in government.

Our fieldwork took place August 2009 at DOH headquarters in Tallahassee. The engagement was conducted by Office of the Inspector General audit staff Mark H. Boehmer, Certified Public Accountant, Senior Management Analyst II, under the supervision of Michael J. Bennett, Certified Internal Auditor, Director of Auditing.

Background

Section 287.001, *Florida Statutes*, explains the Florida Legislature recognizes that fair and open competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. Therefore, unless otherwise authorized by law, Section 287.057, *Florida Statutes*, requires that all contracts for the purchase of commodities or contractual services in excess of \$25,000 be awarded by competitive procurement.

Florida law provides exceptions from competitive procurement. Among the exceptions used frequently at DOH is an exemption in Section 287.057(5)(f), *Florida Statutes*, for commodities or contractual services for health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration (Health Services Exemption). Section 287.057(5)(c), *Florida Statutes*, also provides an exception when commodities or contractual services are available only from a single source (Sole Source).

A DOH workgroup was formed in 2005 to increase the agency's competitive solicitations without adversely affecting the delivery of critical healthcare services. At that time management determined only 10% of DOH contracts were competitively bid. Restrictions were placed on the use of the Health Services Exemption unless certain criteria were met or approval was received by the appropriate deputy secretary.

DOH policy DOHP 250-14-07, *Contractual Services Policies & Procedures* explains that competition in procurement of services covered by regulated exemptions may be advantageous to DOH and is recommended whenever practicable. This encourages that even though programs may elect the Health Services Exemption, policy encourages them to use competitive bidding.

Summary

The following table displays the quantity, amount, and percent of contracts (both purchase orders and written agreements) reported in My Florida Market Place and FLAIR¹ by type of procurement. This includes those contracts competitively procured and purchases by exception, and therefore not competitively procured. Competitively bid contracts increased from 10% in 2005 to 14% (for purchase orders) and 17% (for written agreements) today. Contract managers still elected to use the Health Services Exemption for 74.03% of the 842 written agreements in effect as of July 1, 2009 rather than competitively bid such services. The Sole Source exception was utilized to purchase commodities or contractual services for only 8.42% of the 316 purchase orders initiated during the fiscal year ended June 30, 2009.

¹ Florida Accounting Information Resource

	Authorization ¹	Type	Purchase Orders initiated during the fiscal year ended June 30, 2009 ²			Written Agreements in effect as of July 1, 2009 ²		
			Quantity	Amount	Percent	Quantity	Amount	Percent
Small Purchases								
	287.057(1)(a), F.S.	Small purchases are those below the amount for Category Two, or \$25,000. We did not include small purchases in our review.						
Competitive Sealed Bid Proposals								
	287.057(1)(a), F.S.	Invitation to Bid (ITB)	21	\$3,228,264	10.16%	15	\$29,829,254	1.90%
	287.057(2)(a), F.S.	Request for Proposals (RFP)	4	641,854	2.02%	49	19,431,498	1.24%
	287.057(3)(a), F.S.	Invitation to Negotiate (ITN)	5	631,153	1.99%	41	218,654,212	13.96%
			30	4,501,271	14.17%	105	267,914,964	17.11%
Purchases by Exception								
	216.345, F.S.	Membership dues	1	35,336	0.11%			
	255.0525, F.S.	Informal Quote	6	357,533	1.13%			
	287.042(16), F.S.	Another Government Agency	18	3,228,958	10.16%	3	435,415	0.03%
	287.055, F.S.	Consultant's Competitive Negotiation Act	80	7,028,825	22.12%			
	287.057(5)(a), F.S.	Emergency Procurement	3	208,397	0.66%			
	287.057(5)(b), F.S.	State Term Contract	108	11,264,401	35.45%	8	17,124,115	1.09%
	287.057(5)(c), F.S.	Single Source	41	2,674,764	8.42%	12	2,192,662	0.14%
	287.057(5)(f), F.S.	Exempt Regulated Utilities & Public Communications	3	214,599	0.68%			
	287.057(5)(f), F.S.	Artistic Services Exemption	2	68,300	0.21%			
	287.057(5)(f), F.S.	Auditing Services Exemption	1	44,100	0.14%			
	287.057(5)(f), F.S.	Legal Services Exemption				5	3,208,677	0.20%
	287.057(5)(f), F.S.	Health Services Exemption	4	417,405	1.31%	591	1,159,304,959	74.03%
	287.057(5)(f), F.S.	Exemption for services to persons with mental or physical disabilities by not-for-profit corporations.				6	11,668,564	0.75%
	287.057(5)(f), F.S.	Medicaid Services Exemption				6	896,930	0.06%
	287.057(5)(f), F.S.	Government Agency or University	17	1,496,246	4.71%	78	79,348,427	5.06%
	287.057(6), F.S.	One Response to ITB/RFP/ITN				2	906,000	0.06%
	287.057(11), F.S.	State or federal law prescribes contractor	1	90,000	0.28%	26	22,904,526	1.47%
	413.036, F.S.	Blind/Handicapped Program	1	142,691	0.45%			
			286	27,271,555	85.83%	737	1,297,990,274	82.89%
TOTAL			316	\$31,772,826	100.00%	842	\$1,565,905,238	100.00%

¹ Authorization in *Florida Statutes* (F.S.)

² Contract amounts may represent payments to be made for periods longer than 1 year in duration.

Conclusion

We commend management's efforts to increase competitively bid contracts from 10% in 2005 to 14% (for purchase orders) and 17% (for written agreements) today. However, to ensure DOH is obtaining the best contracting value, to meet the spirit of legislative intent, as well as to inspire confidence in the contracting process, management should revisit the current utilization of the Health Services Exemption and consider taking additional steps to further increase the use of competitively bid contracts.

Closing Remarks

We would like to thank management and staff of the Division of Administration, Bureau of General Services for providing their cooperation and assistance to us during the course of this review engagement. We also want to express our appreciation to other DOH staff, particularly contract managers at Headquarters and county health departments for providing the documentation that we reviewed.

JDB/mhb

cc: Matt Kirkland, C.P.A., Chief
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