



November 11, 2015

To: Finance and Administration Committee

From: Darrell Johnson, Chief Executive Officer

Janet Sutter, Executive Director
Internal Audit Department

Subject: Review of Bidder Protest Process

Overview

The Internal Audit Department has completed a review of the bidder protest process. Based on the review, the Orange County Transportation Authority complies with regulations and procedures for handling of bid protests, except for the requirement to notify the Federal Transit Administration of protests relating to federally funded procurements.

Recommendation

Direct staff to implement one recommendation provided in the Review of Bidder Protest Process, Internal Audit Report No. 16-504.

Background

The Orange County Transportation Authority (OCTA) is required by regulation to maintain protest procedures to resolve disputes relating to procurements and to disclose information regarding protests to the awarding agency.

Prospective contractors have the right to file a bid protest challenging procurement actions and/or contract award if it is believed that OCTA failed to comply with the terms of the solicitation or has not conducted the procurement fairly. If, based on review of the written protest, OCTA determines that solicitation, award, or proposed award was not made in accordance with applicable statutes, regulations, policies, and procedures, OCTA shall, in its sole discretion, grant an appropriate remedy.

According to Contracts Administration and Materials Management (CAMM) reports, during the three year period from July 1, 2012 through June 30, 2015,

a total of 329 Requests for Proposal (RFP) and 196 Invitations for Bid (IFB) were issued and only eight bidder protests were filed. Seven of the eight protests related to IFB procurements and one related to an RFP. All of the protests were resolved at the department level.

Discussion

Regulations and CAMM policy require notification be provided to the Federal Transit Administration (FTA) of any protests relating to FTA-funded procurements. CAMM procedures indicate that CAMM will notify the Financial Planning and Analysis Department (FP&A) and request that the FTA be notified. Testing found that CAMM notifies FP&A; however, notification is not provided to the FTA. Internal Audit recommends that FP&A establish procedures to ensure notification is provided as required and documentation of this communication is maintained. Procedures should include a process to ensure the FTA is also provided periodic status updates, as required. Management agreed and indicated that procedures will be implemented to ensure compliance.

Summary

The Internal Audit Department has completed a review of the bidder protest process.

Attachment

A. Review of Bidder Protest Process

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ORANGE COUNTY TRANSPORTATION AUTHORITY INTERNAL AUDIT DEPARTMENT



Review of Bidder Protest Process

Internal Audit Report No. 16-504

October 23, 2015



Performed by: Janet Sutter, CIA, Executive Director
Gabriel Tang, CPA, Principal Internal Auditor *J. Sutter for*

Distributed to: Virginia Abadessa, Director, CAMM
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**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Review of the Bidder Protest Process
October 23, 2015**

Contents

Conclusion 1
Background 1
Objectives, Scope, and Methodology 2
Audit Comment, Recommendation, and Management Response..... 3
 Federal Transit Administration Notification 3

ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Review of the Bidder Protest Process
October 23, 2015

Conclusion

The Internal Audit Department (Internal Audit) has completed a review of the bidder protest process. Based on the review, the Orange County Transportation Department (OCTA) complies with regulations and procedures for handling of bid protests, except for the requirement to notify the Federal Transit Administration (FTA) of protests relating to federally funded procurements.

Background

OCTA is required by regulation to maintain protest procedures to resolve disputes relating to procurements and to disclose information regarding protests to the awarding agency.

Prospective contractors have the right to file a bid protest challenging procurement actions and/or contract award if it is believed that OCTA failed to comply with the terms of the solicitation or has not conducted the procurement fairly. If, based on review of the written protest, OCTA determines that solicitation, award, or proposed award was not made in accordance with applicable statutes, regulations, policies, and procedures, OCTA shall, in its sole discretion, grant an appropriate remedy.

For procurements within the authority of OCTA staff, the Director of Contract Administration and Materials Management (CAMM) is responsible for review and disposition of protests. For Board of Director (Board) approved procurements, in the event of an adverse decision by the Director of CAMM, the protester may submit the protest in writing to the Chief Executive Officer (CEO), and the CEO will review and render in writing a final decision. In the event of an adverse decision by the CEO, the protester may request in writing a review by the Board, and the Clerk of the Board shall place the item on the Board agenda for consideration at the next Board meeting.

According to CAMM reports, during the three year period from July 1, 2012 through June 30, 2015, a total of 329 Requests for Proposal (RFP) and 196 Invitations for Bid (IFB) were issued and only eight bidder protests were filed. Seven of the eight protests related to IFB procurements and one related to an RFP procurement. All of the protests were resolved at the department level.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Review of the Bidder Protest Process
October 23, 2015**

Objectives, Scope, and Methodology

The objectives were to review and test compliance with applicable regulations, policies and procedures for bidder protests.

The methodology consisted of review and testing of the bidder protest process to determine compliance with applicable regulations, policy and procedures.

The scope was limited to activity during the period July 1, 2012 through June 30, 2015.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Review of the Bidder Protest Process
October 23, 2015**

Audit Comment, Recommendation, and Management Response

Federal Transit Administration (FTA) Notification

Regulations and CAMM policy require notification be provided to the FTA of any protests relating to FTA-funded procurements. CAMM procedures indicate that CAMM will notify the Financial Planning and Analysis Department (FP&A) and request that the FTA be notified.

Testing found that CAMM notifies FP&A; however, notification is not provided to the FTA.

Recommendation 1:

Internal Audit recommends that FP&A establish procedures to ensure notification is provided as required and documentation of this communication is maintained. Procedures should include a process to ensure the FTA is also provided periodic status updates, as required.

Management Response:

The Finance and Administration Division agrees with the Internal Audit recommendation and will update FP&A's Grant desktop procedure as follows:

Upon receiving notification from CAMM of a protest related to a contract required to comply with FTA Circular 4220.1E, the FP&A Grant Manager (GM) will log the protest and email the FTA Regional Office notifying them of such protest. In terms of monitoring the status of a protest, the FP&A GM will utilize the Quarterly FTA Milestone Progress Report as a means to communicate the pending status to the FTA Regional Office. Upon receiving resolution of the protest from CAMM, the FP&A GM will log the protest resolution and email the FTA Regional Office notifying them of such protest resolution. All protests supporting documentation will be made available to the FTA Regional Office consistent with FTA Circular 4220.1E.