



CITY OF ATLANTA

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**TO:** Honorable Mayor and Members of the City Council

**FROM:** Amanda Noble

**DATE:** February 18, 2019

**SUBJECT:** Independent Procurement Review Results (PILOT)

The purpose of this memo is to communicate the results of our review of ten Hartsfield-Jackson Atlanta International Airport Retail 2018 Concessions packages. We sent the memo to the Chief Procurement Officer, David Wilson, II, on November 6, 2018, and received his response on February 13, 2019. Staff from the Department of Law also reviewed the draft. Procurement's response is attached.

Pursuant to Section 2-603(5) of the city charter, the City Auditor's Office has been authorized to review all solicitations seeking council authorization and valued at \$1 million or more, to ensure that the contract file is complete and conduct conflict verifications of each proponent responding to the solicitation.

We reviewed the airport retail packages at the request of the chief procurement officer and used the solicitations to test our procedures for the independent procurement review process. The specific scope included the following airport retail concession solicitations: FC-9862, 9863, 9864, 9865, 9866, 9867, 9868, 9869, 9870, and 9871. The packages were requests for proposals to develop, design, operate, construct, maintain, and manage retail concession locations at the airport; the number, size, and location varied by package. Three of the packages were cancelled due to award limitations and one package was cancelled because there were no responsive proponents.

Our review methodology included a detailed review of the solicitation, submittal, evaluation, and award phases to compare against procurement procedures and best practices, as well as

testing to assess conflicts between parties involved in the process. We collaborated with the chief procurement officer to develop our specific testing methods, which are intended to flag potential indicators of bid manipulation and collusive bidding. The presence of any of these red flags in an individual solicitation does not necessarily indicate that fraud occurred.

In our review of the ten airport solicitations, we found no apparent conflicts of interest among parties involved in the solicitations. We noted the following areas of concern:

1. In FC-9871, procurement identified a proponent as responsive and moved them forward for evaluation; however, in our review the proponent did not appear to submit all documentation, and department staff noted the missing documentation on one of the responsive review forms. Unclear or inconsistent responsiveness determinations could be a red flag of bid manipulation.
2. In FC-9871, the proponent recommended for award was listed as a subcontractor in the losing proponent's submittal, which could suppress competition.
3. In FC-9866, a proponent bid twice - once as a majority owner in a partnership, then again as a stand-alone business, which could suppress competition.
4. Six of the ten packages had fewer than three submittals. Receiving fewer than three bids is a widely accepted indicator of a lack of competition. Robust competition helps to reduce the risk of fraud.
5. All of the packages had four or more addenda, which could indicate unclear specifications or unclear scope of work. We did not find that the substantive changes in criteria appeared to favor a particular proponent.
6. An evaluator from the user agency failed to disclose ownership in one business on the city's 2017 financial disclosure form, which may be a potential ethics violation. The business did not appear to create a conflict of interest with the solicitations or the proponents, and the business was dissolved prior to the evaluation date. The evaluator reviewed FCs-9863, 9865, 9870, and 9871.
7. We noted that in at least one instance (FC-9871), procurement performed two responsive reviews of a proponent and reached different responsive determinations. Staff told us that they conduct validation reviews, which we believe is a prudent practice; however, it is not clear from the checklists which determination is final. For greater transparency and clarity, procurement should clearly note on the form which review is the final determination.
8. We also noted that in at least two instances (FC-9866 and FC-9868), the relationship between companies was not clear in the proposals, e.g., whether they are joint ventures, partnerships, etc. The relationship governs which company is required to submit the required forms for a responsive determination.

A table of our findings for each solicitation is shown below. The contents of this report reflect that these solicitations are still open and information providing specifics of the proposals is not yet public.

Solicitation #	Number of Responsive Submittals	Red Flags Identified
FC-9862 18 locations on concourse A&T	<ul style="list-style-type: none"> <li>• 2 submittals</li> <li>• 1 responsive</li> </ul>	<ul style="list-style-type: none"> <li>• Fewer than 3 submittals</li> <li>• 4 addenda</li> </ul>
FC-9863 20 locations on concourse B & Atrium	<ul style="list-style-type: none"> <li>• 2 submittals</li> <li>• 2 responsive</li> </ul>	<ul style="list-style-type: none"> <li>• One evaluator did not disclose ownership in one LLC on the city's 2017 financial disclosure, which may be an ethics violation. It should be noted that the LLC was dissolved prior to the evaluation date.</li> <li>• 5 addenda</li> <li>• Fewer than 3 submittals</li> </ul>
FC-9864 20 locations on concourses C&D	<ul style="list-style-type: none"> <li>• 4 submittals</li> <li>• 2 responsive</li> <li>• Cancelled due to award limitation</li> </ul>	<ul style="list-style-type: none"> <li>• 5 addenda</li> </ul>
FC-9865 3 locations on concourses B&C	<ul style="list-style-type: none"> <li>• 6 submittals</li> <li>• 2 responsive</li> </ul>	<ul style="list-style-type: none"> <li>• One evaluator did not disclose ownership in one LLC on the city's 2017 financial disclosure, which may be an ethics violation. It should be noted that the LLC was dissolved prior to the evaluation date.</li> <li>• 4 addenda</li> </ul>
FC-9866 2 locations on concourse A	<ul style="list-style-type: none"> <li>• 5 submittals</li> <li>• 1 responsive</li> </ul>	<ul style="list-style-type: none"> <li>• A proponent bid once as a stand-alone company. The same proponent also effectively bid again in a separate submission as a majority owner in a joint venture. The relationship between the standalone company and the joint venture was not specifically stated in either submittal. The proponent would benefit if either the standalone company or the joint venture were awarded the contract; however, procurement's procedures do not disallow a proponent from bidding twice in this manner.</li> <li>• 4 addenda</li> </ul>
FC-9867 5 locations on concourses A&T	<ul style="list-style-type: none"> <li>• 2 submittals</li> <li>• 1 responsive</li> <li>• Cancelled due to award limitation</li> </ul>	<ul style="list-style-type: none"> <li>• Fewer than 3 submittals</li> <li>• 4 addenda</li> </ul>
FC-9868 2 locations on concourse D	<ul style="list-style-type: none"> <li>• 2 submittals</li> <li>• 0 found responsive</li> <li>• Cancelled due to no responsive proponents</li> </ul>	<ul style="list-style-type: none"> <li>• Fewer than 3 submittals</li> <li>• 4 addenda</li> </ul>

Solicitation #	Number of Responsive Submittals	Red Flags Identified
FC-9869 2 locations on concourse C	<ul style="list-style-type: none"> <li>• 3 submittals</li> <li>• 1 responsive</li> </ul>	<ul style="list-style-type: none"> <li>• 4 addenda</li> </ul>
FC-9870 7 locations on concourses B&D	<ul style="list-style-type: none"> <li>• 1 submittal</li> <li>• 1 responsive</li> <li>• Cancelled due to award limitation</li> </ul>	<ul style="list-style-type: none"> <li>• One evaluator did not disclose ownership in one LLC on the city's 2017 financial disclosure, which may be an ethics violation. It should be noted that the LLC was dissolved prior to the evaluation date.</li> <li>• Fewer than 3 submittals</li> <li>• 4 addenda</li> </ul>
FC-9871 7 vending locations on concourses A&D	<ul style="list-style-type: none"> <li>• 2 submittals</li> <li>• 1 found responsive</li> </ul>	<ul style="list-style-type: none"> <li>• DOP conducted two responsive reviews, one noting that a proponent did not submit an attachment to Form 2 question C1, and one that checked the attachment for Form 2 as present and responsive. The final determination of responsiveness is unclear based on the conflicting responsive reviews. We did not find the required attachment during our review, so it appears that procurement may have found the proponent responsive in error. This proponent was the recommended awardee.</li> <li>• The proponent recommended for award was listed as a subcontractor in the losing proponent's submittal. The losing proponent listed the recommended awardee as a confirmed subcontractor.</li> <li>• One evaluator did not disclose ownership in one LLC on the city's 2017 financial disclosure, which may be an ethics violation. It should be noted that the LLC was dissolved prior to the evaluation date.</li> <li>• Fewer than 3 submittals</li> <li>• 5 addenda</li> </ul>



## CITY OF ATLANTA

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DEPARTMENT OF PROCUREMENT  
David L. Wilson II  
Chief Procurement Officer

**TO:** Amanda Noble, City Auditor

**FROM:** David Wilson, II

**DATE:** January 25, 2019

**SUBJECT:** Retail Concessions 2018 Independent Procurement Review Response

This response is in regard to your letter to me with the subject line Independent Procurement Review Results (PILOT). I have enclosed your letter for your reference. Your letter communicated the results of your review of ten Airport Retail 2018 Concessions packages. Your letter stated that in your review you found no apparent conflicts of interest among parties involved in the solicitations; however, you identified eight areas of concerns. Your areas of concern are summarized below along with my response to each concern:

1. In FC-9871, procurement identified a proponent as responsive and moved them forward for evaluation; however, in our review the proponent did not appear to submit all documentation, and department staff noted the missing documentation on one of the responsive review forms.

**Response: The referenced proponent's response to Form 2, question C1 was "See Attached". DOP made note of the response "See Attached" during the initial responsiveness review. When presented to CPO for final review, the CPO made the determination that the response "See Attached" did not necessarily mean that the referenced attachment had to immediately follow Form 2 in the proposal. The information requested on Form 2, question C1 was included in the proponent's proposal in their Executive Summary.**

2. In FC-9871, the proponent recommended for award was listed as a subcontractor in the losing proponent's submittal.

**Response: FC-9871 was procured as a Request for Proposals (RFP). In an RFP cost/price/financial offer is only one of multiple factors evaluated. Specifically, in FC-9871, the financial offer was worth only 10% of the total scoring, which significantly deters anticompetitive conduct as well as achieves free and open competition.**

3. In FC-9866, a proponent bid twice - once as a majority owner in a partnership, then again as a stand-alone business.

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**Response:** As stated in my response to concern number two, the likelihood of anticompetitive conduct in the RFP process is minimal. In addition, the larger number of submissions (five proposals submitted in response to FC-9866) further reduces the minimal possibility of such behavior.

4. Six of the ten packages had fewer than three submittals.

**Response: Noted.** DOP advertised the ten packages on both the City and State's electronic portals in support of maximizing competition. The Department of Aviation also held a Concessions industry day which over 600 persons attended. However, it is a prospective proponent's decision as to whether or not they submit a proposal in response to any RFP.

5. All of the packages had four or more addenda, which could indicate unclear specifications or unclear scope of work.

**Response: Noted.** However, DOP is not responsible for the development of specifications or scopes of work.

6. An evaluator from the user agency failed to disclose ownership in one business on the city's 2017 financial disclosure form, which may be a potential ethics violation. The business did not appear to create a conflict of interest with the solicitations or the proponents, and the business was dissolved prior to the evaluation date. The evaluator reviewed FCs-9863, 9865, 9870, and 9871.

**Response: DOP does not have the capability to determine if an evaluator has not disclosed ownership or interest in a business on the financial disclosure form. Each evaluator is provided guidelines and trained regarding the evaluation process as well as required to submit his/her resume before selection and execute an agreement to abide by the City's Standards of Ethical Conduct.**

7. We noted that in at least one instance (FC-9871), procurement performed two responsive reviews of a proponent and reached different responsive determinations. Staff told us that they conduct validation reviews, which we believe is a prudent practice; however, it is not clear from the checklists which determination is final.

**Response: DOP made note of the response for Form 2, question C1. The CPO made the final determination and deemed the submittal responsive. Both checklists were presented to the CPO at the same time. The CPO's determination of responsiveness is evidenced by the CPO remark and initial at the top of the checklist page.**

8. We also noted that in at least two instances (FC-9866 and FC-9868), the relationship between companies was not clear in the proposals, e.g., whether they are joint ventures, partnerships, etc.

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**Response: For FC-9866 and FC-9868, the proponent at issue stated in its proposal that it would sublease to the other entity if awarded the contract.**

DLW/mas

Enclosure

cc: Kristen Rectenwald  
John Selden  
Keith Brooks  
Mano Smith