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CITY OF EXETER — GARBAGE IN GARBAGE OUT

BACKGROUND

Before the coming of the European settlers, the area that is now Exeter was part of a vast plain where elk, antelope and deer grazed and spring wildflowers bloomed in profusion. Native American Indians made their homes in the oak forest two miles north of the present town.

In 1888, as the railroad carved its way through the southern San Joaquin Valley, towns grew up along its route. D.W. Parkhurst, representing the Southern Pacific Railroad, bought land from John Firebaugh, an early settler and the town of Exeter was born, named after Parkhurst's native Exeter, England.

The development of water resources and the planting of fruit trees and vines brought growth to the little community. The first school was built in 1897, the high school district was organized in 1908, and the residents voted to incorporate in 1911. Cattle ranching was an integral part of Exeter's history. The Gill Cattle Company of Exeter was established in the late 1800's and is still in operation. Once the largest cattle ranching business in the United States, the company owned and leased more than six million acres of land in nine western states.

Boasting the finest navel oranges in the world, Exeter, California, has a rich agricultural heritage built on a hundred years of American tradition. Exeter is known for growing the sweetest oranges in the world and as the "Citrus Capital of the World".

REASONS FOR INVESTIGATION

The 2009-2010 Tulare County Grand Jury received a complaint concerning the awarding of a contract to Sunset Waste for handling the City of Exeter (City) refuse, green waste collection, disposal and recycling services. The complaint alleged that the City's approval of this contract was unlawful and the City failed to follow their own procedures. As a result, an investigation was initiated.

PROCEDURES FOLLOWED

1. Relevant witnesses were interviewed
2. Relevant documents were inspected

FINDINGS

1. On May 27, 2009, the City sent out a Request for Proposals (RFP) for refuse, green waste collection, disposal and recycling services.
2. The RFP indicated that sealed proposals would be accepted until 10:00 AM on June 30, 2009. The RFP also indicated that a pre-bid conference would be held at the City Hall on June 10, 2009.
3. The City formed a committee to review the five proposals. Of the five, one was rejected because the committee felt their programs were lax.

4. The committee met with the four finalists and ranked the proposals from 1 to 4 as follows:
 - a. Number 1. Sunset Waste
 - b. Number 2. Penas
 - c. Number 3. Waste Connection (which had the contract for the proceeding eighteen years)
 - d. Number 4. Tule Trash
5. On August 11, 2009, the committee's recommendations were presented to the City Council. Included in the packet was an "Attachment B" comparing the services the companies could provide. The Council authorized the Public Works Director to meet with Sunset Waste to negotiate a contract. "Attachment B" included items that were not specified in the RFP and the "Attachment B" was inaccurate in some areas. At this meeting, several of the companies that submitted proposals objected to the committee's recommendation.
6. On August 25, 2009, the City approved the contract with Sunset Waste.
7. On September 16, 2009, the City signed the contract with Sunset Waste. This contract was for seven years with a three year extension. The total cost of the contract was well in excess of \$75,000.
8. City Ordinance No. 579, Section 3.36.100 states, "Formal Bid Procedure. The procedure set out in this Section shall be utilized for all purchases or contracts involving amounts of \$75,000 or more.
 - A. Award of all contracts and purchases made pursuant to the

procedures of this Section shall be made to the lowest responsible bidder meeting specifications, except as specifically otherwise authorized by this Chapter.

- B. Written specifications and plans, if appropriate, shall be prepared for all purchases proposed to be made and contracts proposed to be awarded under this Section. Such Specifications and plans, together with the deadline for and place to file sealed bids with the city, and other requirements, shall be circulated to publications appropriate to the subject of the call for bids, posted at City hall, and advertised in a legally adjudicated newspaper in geographic areas appropriate to reaching prospective bidders.
- C. Such notices and advertisements shall be designed to cause full public notification of all calls For sealed bids by providing at least ten days written notice to prospective bidders prior to the proposed deadline for the receipt of sealed bids.
- D. Sealed bids shall be accompanied by a bid bond or cashiers check in the amount set by the City Administrator and failure to include such bid bond or cashiers check with any bid shall be disqualifying.
- E. Sealed bids shall be received and opened by the City official designated by the bid call, at the place and time specified in said bid call.
- F. A written analysis shall be made of all sealed bids received under the procedures of this Section, and shall contain information relative to all bidders, including a written recommendation by the affected

department head and the City Administrator as to which bidder is recommended to be the lowest responsible bidder.

- G. All bid calls shall contain the statement that the City Council may reject any and all bids for any good or service and may cancel any call for bids at any time in the process.”
9. The City made the assertion that refuse collection is a “specialized service” and as such would fall under City Ordinance No. 579, Section 3.36.110 relating to “Professional and Specialized Services”. This section states that it applies to “The acquisition of copyrighted and patented items, specialized or professional services, and services for which there is no reasonable alternative which is of equal or better quality or nature, shall be made by following the procedures set forth in this Section.
- A. The purchase order or contract award for such professional or specialized services or materials shall have a copy of a statement attached thereto by both the vendor or contractor and the City Administrator stating the reasons and the specific copyright or patent circumstances which have given rise to the invoking of this exception to the competitive acquisition process set out in this Chapter.

The original of such statement shall be filed with the City Clerk.”

The Grand Jury was unable to find any such statement.

- 10. The contract negotiated with Sunset Waste contains a provision for a

\$1.00 per month senior citizen discount, if requested. The City is not currently offering this discount to seniors.

- 11. The senior discount was contained in the prior contract with Waste Connection but the City had not offered the discount for approximately fifteen years.

CONCLUSIONS

The fact that the City considered items in the proposals that were not requested in the RFP indicates that not all of the companies that submitted proposals were playing on an equal playing field. One company was given preference for programs that were not required in the RFP and other companies were not allowed to adequately respond. If the City was interested in these programs, all companies that submitted a proposal should have been given the opportunity to respond, or the programs should have been identified in the RFP.

The City claims that since this was a proposal and not a bid, City Ordinance No. 579, Section 3.36.100 does not apply. Regardless of what the process is called, a contract was negotiated in violation of City Ordinance No. 579, Section 3.36.100.

The Grand Jury does not believe that refuse collection would fall under the “Professional and Specialized Services” section of the City Ordinance. Paragraph E of this section states “Professional Services’ means work performed by specially trained and experienced persons, firms or corporations rendering professional services and advise (sic) such as accounting, auditing, financial advisory, securities underwriting, legal, medical, engineering, architectural, environmental, economic, real estate, insurance, appraisal, lobbying, public relations,

ordinance codification and publication, or similar such highly specialized services.”

However, if refuse collection does fall under this exemption the City failed to follow it’s own procedures by failing to attach a statement stating the “...reasons and the specific copyright or patent circumstances which have given rise to the invoking of this exception to the competitive acquisition process set out in this Chapter.”

RECOMMENDATIONS

1. All contracts, whether obtained through a RFP or bid process, comply with City Ordinance No. 579, Section 3.36.100.

2. Offer the senior citizen discount specified in the contract.
3. If the City intends to use the RFP process, adopt an ordinance to specify the process.

REQUIRED RESPONSES

City of Exeter