



Investigative Report

Investigation of Pricing of Solid Waste Scrap Metals

**Inspector General
Department**



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Public Integrity Unit Investigative Report Alleged Improper Pricing of Solid Waste Scrap Metals



To: The Honorable Linda Doggett, Lee County Clerk of Circuit Court & Comptroller

From: Tim Parks, Chief Internal Audit Officer/Inspector General

Date: December 26, 2017

Subject: Case File #2017.09; Investigation of Pricing of Solid Waste Scrap Metals

Dear Ms. Doggett:

The Inspector General Department has completed an investigation of the Lee County Solid Waste Department. There were complaints lodged against the Department alleging the improper and unfair bidding and pricing of scrap metal to dealers within the community.

We reviewed transactions, policies, procedures, and practices regarding the sale of scrap metals to determine if the allegations could be substantiated. Our office worked with management to evaluate certain practices and controls to ensure that Lee County was fairly bidding and receiving a market price for the sale of scrap metals.

Management's response is attached to this report. We would like to thank management and staff for their time, assistance, and cooperation during the investigation.

This report will be posted to the Lee County Clerk of Court's website under Inspector General Investigations. A link to the report has been sent to management and appropriate parties.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Tim Parks".

Tim Parks, CIA, CIG
Chief Internal Audit Officer/Inspector General
Inspector General Department
TJP/GK



Public Integrity Unit Investigative Report Alleged Improper Pricing of Solid Waste Scrap Metals



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Public Integrity Unit Investigative Report Alleged Improper Pricing of Solid Waste Scrap Metals



To: Keith Howard, Director, Lee County Solid Waste Department

From: Larry Haut, CIGI, CFE, CGAP; Deputy Inspector General

Date: November 16, 2017

Subject: Case File #2017.09; Investigation of Pricing of Solid Waste Scrap Metals

Introduction

The Inspector General (IG) Department's Public Integrity Unit received an allegation regarding potential fraud, waste and abuse. A Lee County resident who is an official of Garden Street Iron and Metal, Inc., Fort Myers, FL (Garden Street) filed the complaint in person. The onsite meeting took place in the IG conference room, 1825 Hendry Street, Fort Myers, FL at 1:30 pm on February 9, 2017. During the meeting, the complainant provided supporting documentation and shared stated allegations.

Allegations

1. The complainant alleged that the Lee County Board of County Commissioner's (BOCC) Solid Waste Department (Solid Waste) had been selling scrap metals to other companies at less than market prices. He provided documentation that he claimed would demonstrate losses of more than \$100,000 to the BOCC because of the improper pricing methodology.
2. He alleged that in the past, Garden Street had competitively bid to purchase scrap metals from Solid Waste at a higher price than the amount bid by the competing companies.
3. He alleged that management at Solid Waste would rather do business with the competitors than with him, even though he can demonstrate the monetary loss to the BOCC as a result of accepting lesser bids from his competitors.

An investigation was opened as case #2017.09 and was performed in compliance with the *Quality Standards for Investigations* included within the *Principles and Standards for Offices of Inspector General* as adopted by the Association of Inspectors General (AIG).

The IG Department reaches one of the following three conclusions for each allegation at the conclusion of the investigation:



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- **Substantiated:** The allegations are validated and there are sufficient case-supporting materials to justify a reasonable conclusion that the actions occurred, and there were violations of law, policy, rule, or contract.
- **Not Substantiated:** There are sufficient case-supporting materials to justify a reasonable conclusion that the alleged actions did not occur, or there were no identified violations of law, policy, rule, or contract.
- **Neither Substantiated nor Refuted:** The allegations are not validated and there are insufficient case-supporting materials to prove or disprove the allegations.

Background

Garden Street and Lee County BOCC Relationship:

- The complainant stated that his company has had a difficult relationship with Solid Waste for many years.
- In particular, there have been issues since at least 2010, involving the former Solid Waste Director, several of his managers, and a former Lee County Commissioner relating to the alleged treatment of Garden Street.
- The complainant had previously spoken with the Lee County Clerk of the Court's former Director of Internal Audit as early as 2010, about these issues.

The topics of dispute included the following:

- **Tire shredding business:**
 - During a visit to Garden Street's business site in January 2010, a former Lee County commissioner learned that the complainant's company had just received a State of Florida certification through the DEP to process scrap tires. While onsite the former commissioner allegedly called the former Solid Waste Director to advise him of that fact. The Director was purportedly unhappy about the license. At that time the tipping fee at Solid Waste was \$105 per net ton for tires.
 - Several months later the former Director submitted bids to Desoto and Charlotte Counties to put the BOCC in competition against Garden Street to process scrap tires. He dropped the BOCC's tire rate tipping fee to \$70 or \$75 per ton to allegedly undercut Garden Street's rate. He also sent letters to local tire shops informing them of the services and the new tipping fee.
 - At a BOCC meeting held shortly after the above events, another former Lee County Commissioner questioned why the Charlotte and Desoto County bids were allowed before this issue was discussed with the Commissioners. The bids were subsequently withdrawn.



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- While this was going on, the former Director allegedly made a comment that if the complainant did not back off, the Director was going to force Garden Street to bring the auto shredder residue to the Lee County incinerator. This was researched. The complainant's attorney and the complainant found that this residue and the tires are considered "special waste" by the State and may not be regulated by local government Solid Waste Directors.
- Recent lawsuit:
 - On February 5, 2015, Garden Street sued the BOCC for violation of the Florida Antitrust Act of 1980. The complaint alleged that the BOCC set a not-to-exceed fee for franchise haulers for commercial recycling collection service. By setting the not-to-exceed fee, Garden Street claimed that the fee did not reflect the actual cost of providing the commercial recycling service, and it was significantly lower than the fee typically charged within the industry. Garden Street contended that this resulted in stifling competition by private enterprise generally and undercut his businesses specifically.
 - On March 21, 2017, The BOCC approved a negotiated settlement agreement in the pending case. The BOCC agreed to remove the rate cap for commercial recycling collection services and agreed to adhere to its governing ordinances and Administrative Code when setting solid waste rates.
- Scrap metal bidding process:
 - The Complainant contends that very soon after the former Director learned about the DEP tires certification obtained by Garden Street, he was told that the former Director was angry and allegedly instructed his staff to put the ferrous scrap metal out for bid. Prior to this, Garden Street was the only company purchasing scrap metal from Solid Waste. On Feb 24, 2010, for the first time Garden Street was sent a Request for Bid Form for the purchase of the BOCC's scrap metal. According to the Complainant, there was one other competing bidder.

The following form and process was instituted by Solid Waste for the two month bid/quote from 2010 thru 2016.

“REQUEST FOR SHORT-TERM PRICE QUOTATION FORM”

The Lee County Solid Waste Department (LCSWD) is requesting a Firm Fixed Minimum Price (per 100 pounds) for mixed types of primarily ferrous metals (including white goods) collected from our facilities and delivered to a metals recycling company (vendor) in Lee County. Proposers must possess the proper requirements for receiving scrap appliances that may contain CFCs.



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The Price per 100 pounds quoted as a response to this request will apply, as a minimum, for an approximate two month period. The amount of metal that we typically generate is from 35 to 50 tons per month. LCSWD makes no guarantee as to the amount of metal that will be delivered to the receiver. LCSWD will deliver metals collected from our facilities to the vendor using a self-unloading dump truck to a location in the Ft. Myers area.

Payment must be made from the Receiver to the County on a weekly basis by check or money order to the Lee County Solid Waste Division. Each check must be received no later than Saturday of the week following the deliveries (for any one week). The checks will be delivered or mailed.

Please FAX your firm quote to 239-461-5871 no later than noon on date _____.
(Call Emory Smith if any questions)

Firm fixed price beginning on month, day and year and valid through date of _____.

Price per 100 Pounds- \$ _____

Physical Address for Receiving Metal _____

Company Name _____

By _____

Signature _____

The Complainant alleged that the initial bid in February 2010 was solicited by FAX and was not sealed. Garden Street sent a bid of \$9.50 per 100 pounds. They received a phone call from Solid Waste that they were the winning bid. An hour later they allegedly received another phone call from Solid Waste telling them that they were no longer the highest bid because a competitor had outbid them.

In 2000, the BOCC set a precedent that a company with a history of or committing code violations and other legal violations can be deemed to not have the ability to perform, even if they are a winning bidder. The Complainant alleged that one competing company in 2010 was violating certain regulations, including utilizing noncitizens as employees. He notified the BOCC of that allegation. The competing company was still allowed to compete for business with the BOCC.



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Investigative Actions

Complaint Filed February 9, 2017:

1. The complainant alleged that the Lee County Board of County Commissioner's (BOCC) Solid Waste Department (Solid Waste) had been selling scrap metals to other companies at less than market prices. He provided documentation that he claimed would demonstrate losses of more than \$100,000 to the BOCC because of the improper pricing methodology.
2. He alleged that in the past, Garden Street had competitively bid to purchase scrap metals from Solid Waste at a higher price than the amount bid by the competing companies.
3. He alleged that management at Solid Waste would rather do business with the competitors than with him, even though he can demonstrate the monetary loss to the BOCC as a result of accepting lesser bids from his competitors.

Scope of Investigation:

This investigation specifically focused on allegations made in the complaint that was filed on February 9, 2017, pertaining to the ferrous scrap metal selling issue and whether contentions raised about the loss of revenue to the BOCC and bidding procedures can be substantiated.

Investigative Methods

Records Review:

1. Bid documentation maintained by the BOCC pertaining to the purchase of scrap iron/ferrous metals by area companies.
2. Financial records reflecting monies deposited by the Solid Waste for payments received from area companies.

Interviews: See Case Supporting Materials.

Meetings: After bids were received, Solid Waste employees reviewed the bid prices submitted and awarded the contracts for a two month period.

Processes utilized in Bidding and Sale of Ferrous Metals: Voluminous records pertaining to the bidding process and payments retained for ferrous metal sales were obtained from Solid Waste and were reviewed. These documents are in the case file.



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Interviews and Contacts:

- Tracy Lodato, Fiscal Manager, Solid Waste Division
- Emory Smith, Superintendent, Solid Waste Division
- Adam Brooke, Procurement Analyst, Lee County Procurement Management

Analysis:

After the initial two month period in 2010, bid solicitations were sent every two months by Solid Waste to multiple area companies that had indicated an interest in securing this business from the BOCC. Garden Street was the highest bidder on multiple occasions in 2010 and received the BOCC's business on those occasions.

Records reflect that the highest bidder was awarded the business and paid the amount established through the bid process to the BOCC. There was no evidence in the records examined that the BOCC awarded the two month contracts to a competitor based on a lower bid price. See Exhibit #1 which reflects specifics on bid submissions, company participation, and winning bids.

Garden Street Participation:

For a majority of time from 2010-2017, Garden Street withdrew from the bi-monthly bidding process. In a letter dated March 5, 2012, Garden Street stated that they would no longer participate. The case file work papers contain a copy of the letter. Garden State did not submit another bid until 2017.

While Garden Street was participating, it submitted the highest bid on five occasions and received the contract each time. The two month intervals were from:

- 5/1/10-6/30/10
- 7/1/10-8/31/10
- 11/1/10-12/31/10
- 1/1/11-2/26/11
- 2/1/17-3/31/17

The chart below reflects specifics on bid submissions, company participation, and winning bids.



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Company Bid Participation Chart, February 2010 thru June 2017:

Company	*Bids Submitted	Bids Won	No Bid Submitted
Allied	45	29	1
All Scrap	19	4	26
FPT	34	6	12
Garden Street	14	5	31

*Includes Tie Breaker bids

The following should also be noted:

- Allied was the only bidder from November 2015 through October 2016.
- Bid processes were taken over by the BOCC Procurement Department in 2016 and 2017:

Beginning in June 2016, the BOCC's Procurement and Solid Waste Departments initiated an effort to improve the bidding criteria and mechanisms for qualifying and selecting companies that bid for the metal recycling business. The investigative case file work papers contain documentation reflecting the updated processes. The following additional areas were among those that were addressed:

- Rather than utilize open fax bids, the Procurement Department implemented a sealed bid process
- Bidders must use a revised Proposal Form
- A Bid Protest Procedure was established
- Terms and Conditions and Scope of Work were established
- An Affidavit of Certification with Immigration Laws was required
- A Local Bidder's Preference Questionnaire was added
- Use of Subcontractors Requirements was added
- Designation of DBE's (Disadvantaged Business Enterprises)
- Pricing by Percentage of the AMM or Fixed Minimum Price
- Agreements/Contracts

Garden Street Input on New Processes:

Garden Street and others had the opportunity to provide their views and input for the new procedures. Garden Street raised some of the following points in a memo to Procurement



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Department Management (December 2016) while the new processes were still being considered. The new practices were not finalized until 2017.

- Garden Street noticed that the BOCC chose to eliminate the pricing by percentage of the American Metal Market. They questioned why the County would change this practice since, in their view it provides the flexibility of pricing over a long period of time. They believe the practice allows the bidders the ability to work much closer than if they must just quote a firm price and gamble on the future of the markets.
- They further believed that the above decision would cause the bids to be significantly lower than if the bids were tied to the market and not a flat rate.
- They also wanted to address the Price Escalation/De-Escalation Clause. By their reading, they expressed concern that the bidder could reduce the rate at any time, but not increase the rate.
- They also raised the issue of whether the contract would be for two months or six months, with a one-time renewal.

The BOCC considered these points and reached the following conclusions:

- That the competitive bid process over a two month period was more beneficial to the BOCC and vendors. Neither party would be locked into a yearly price and yearly contracts where there could be wide price fluctuations in the metals markets.
- There were difficulties in using the American Metal price indexes involving copyrights, confidentiality, and verifying of index pricing that would cause complications in the bid process.

Financial Information:

The financial ledgers that are maintained by Solid Waste do not itemize the individual companies from which the payments were received. We estimated payments from the participating companies by reviewing the bid award documentation.

Based upon the analyzed bid materials, a close approximation was made to reflect the total payments from participating companies to Solid Waste during the periods they were awarded the two month contracts. The estimations are as follows:

Company	10/07-1/10	2/10- 4/13	4/13- 6/17	Total
Allied	\$0	\$572,503	\$511,611	\$1,084,114
All Scrap	\$0	\$32,114	\$149,693	\$181,807



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FPT	\$0	\$70,822	\$327,991	\$398,813
Garden Street	\$181,689	\$108,517	\$34,458	\$324,664
Not identifiable	\$0	\$13,411	\$27,598	\$41,009

Summary of Case Supporting Materials

Case supporting materials examined included the following:

- Deposit Record Ledgers for the BOCC’s sale of recycled metals reflecting monies paid by the company purchasers
- Records documenting each two-month bid, which reflected the highest bid received and notifications to the winner from 2010-2017. These include the following:
 - “Request For Short-Term Price Quotation” forms (submitted every two months)
 - Response from Company - Faxed Price Quote
 - Division of Procurement Management - Invitation to Bid and Proposal Documents for 2016 and 2017
 - Detailed Specifications and Informal Quote For Ferrous Metal Recycling
- Written correspondence between Solid Waste and companies bidding on the recycled metals business.
- Other related documentation.

Conclusions

The investigation concluded the following:

Allegation #1 – Not Substantiated: Garden Street and other companies were contacted and requested to participate. Initial bids were provided by Garden Street, and three other bidders. Obtaining bids from multiple independent companies generally indicates that market prices are being obtained. Records provided by Solid Waste reflect the following for the first contested bid covering March 1, 2010 through April 30, 2010:

- Faxes requesting bids were sent as follows:
 - Allied Recycling- Feb 19, 2010 at 3:10 PM
 - Garden Street- Feb 24, 2010 at 2:07 PM
 - All Scrap- Feb 19, 2010 at 3:11 PM and Feb 24, 2010 at 3:41 PM
 - P+S Auto Salvage/FPT- Feb 19, 2010 at 3:13 PM
- Bid Responses were received from Companies as follows:
 - Allied Recycling- Feb 24, 2010 at 12:11 PM- \$11.75



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- Garden Street- Feb 24, 2010 at 2:15 PM- \$9.50
- All Scrap- Feb 24, 2010 at 4:17 PM- \$8.10
- P+S Auto Salvage/FPT- Feb 19, 2010 at 3:41 PM - \$7.50

Allegation # 2 - Not substantiated: The reviewed evidence did not substantiate that the Solid Waste Department was selling scrap metals to another company at a lesser amount than what Garden Street would pay.

Allegation # 3 - Not substantiated: The department director and commissioner that allegedly preferred to do business with other companies are no longer with the BOCC. The reviewed records reflected that before 2010, there was not a competitive bidding process, and Garden Street received all the BOCC's business. Starting in February 2010, a competitive bidding process was instituted. Whether the motivation for implementing the process was driven by a desire to harm Garden Street, or whether it was considered a best practice to obtain competitive bids, we could find no evidence that Garden Street was harmed when they were the high bidder. There was no evidence that any but the highest bidders were awarded the two month contracts.

Observations and Recommendations

Observations:

- The Cash Receipts Ledgers maintained by Solid Waste for each line item entry did not reflect the individual company from which the BOCC's payment was received after 2010.
- The additions to the bidding and procurement practices that were implemented within the last year appear to be a positive step in enhancing confidence in the process.
- The scope of this investigation focused on the bid and contract award process. It did not include a review/audit of the invoices to confirm that the established bid amount was the amount paid on each transaction. However, an internal audit of Solid Waste was completed in August 2016. It was noted that "*Solid Waste revenues were properly calculated, collected, and posted.*"¹

¹ Internal Audit Report, BOCC Solid Waste Division, Report #2016.07, August 1, 2016.



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Recommendations

- Moving forward, the specific company/source of the income received by the BOCC should be listed in a ledger. We discussed this with the Solid Waste Department's Fiscal Manager.
- Continue with the enhanced processes for bids as implemented by the Procurement Department.
- The Fiscal Manager will insure that there is a continuing practice of review for scrap metal payments to insure that the accepted price has been paid and deposited.

Department Action in Response

The Solid Waste Department agreed to timely implement the recommendations stated above (See Exhibit II). These include indicating the specific company source of income for each financial transaction, continuing with enhanced bid and procurement policies, and close review of the accuracy of scrap metal payments received.



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Exhibit I: Specifics on bid submissions, company participation, and winning bids

Date	Allied Recycling	All Scrap	FPT FM LLC	Garden Street
3/1/2010	\$11.75	\$8.10	\$7.50	\$9.50
5/1/2010	\$11.75	No Bid	\$8.00	\$12.25
7/1/2010	\$8.75	\$8.75	\$8.00	\$9.25
9/1/2010	\$12.55	No Bid	\$8.00	\$11.00
11/1/2010	\$11.55	\$11.00	\$10.00	\$12.00
1/1/2011	\$13.50	\$13.25	\$13.50	\$14.25
3/1/2011	\$14.50	\$13.75	\$12.00	\$14.00
5/1/2011	\$14.75	\$14.50	\$12.00	\$14.00
7/1/2011	\$15.00	\$14.76	\$13.25	\$15.00
Tie Breaker	\$15.25	\$15.26	\$13.25	No Bid
9/1/2011	\$16.01	\$15.75	\$13.00	\$15.30
11/1/2011	\$13.26	\$12.76	\$12.00	No Bid
1/1/2012	\$15.26	\$13.29	\$12.52	\$14.30
3/1/2012	\$14.56	\$13.76	\$12.25	*No Bid
5/1/2012	\$14.26	\$14.01	\$13.50	No Bid
7/1/2012	\$10.26	No Bid	\$12.26	No Bid
9/1/2012	\$13.26	\$11.01	\$12.62	No Bid
11/1/2012	\$12.36	No Bid	\$11.21	No Bid
1/1/2013	\$13.06	No Bid	\$11.37	No Bid
3/1/2013	\$13.06	\$11.50	\$12.12	No Bid
5/1/2013	\$11.76	No Bid	\$11.52	No Bid
7/1/2013	\$10.76	\$11.76	\$9.81	No Bid
9/1/2013	\$12.26	\$11.06	\$11.77	No Bid
11/1/2013	\$11.76	No Bid	No Bid	No Bid
1/1/2014	\$12.06	\$12.76	\$11.90	No Bid
3/1/2014	\$10.56	No Bid	\$10.56	No Bid
5/1/2014	No Bid	\$11.05	\$10.70	No Bid
7/1/2014	\$11.26	No Bid	\$10.75	No Bid
9/1/2014	\$11.26	No Bid	\$11.51	No Bid
11/1/2014	\$10.16	No Bid	\$9.00	No Bid
1/1/2015	\$9.26	No Bid	No Bid	No Bid
3/1/2015	\$3.26	No Bid	\$5.51	No Bid
5/1/2015	\$5.52	No Bid	\$5.03	No Bid
7/1/2015	\$5.52	No Bid	\$6.25	No Bid
9/1/2015	\$4.05	No Bid	\$4.61	No Bid



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11/1/2015	\$1.00	No Bid	No Bid	No Bid
1/1/2016	\$2.00	No Bid	No Bid	No Bid
3/1/2016	\$1.50	No Bid	No Bid	No Bid
5/1/2016	\$3.75	No Bid	No Bid	No Bid
7/1/2016	\$2.75	No Bid	No Bid	No Bid
9/1/2016	\$2.55	No Bid	No Bid	No Bid
11/1/2016	No Activity	No Activity	No Activity	No Activity
1/1/2017	No Activity	No Activity	No Activity	No Activity
2/1/2017	\$3.50	No Bid	No Bid	\$6.50
4/1/2017	\$7.50	No Bid	No Bid	\$5.25
6/1/2017	\$6.55	No Bid	No Bid	\$6.37
Total Bids Won	29	4	6	5
Bids Submitted	45	19	34	14
No Bid	1	26	12	31



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Exhibit II: Management Response



**INTEROFFICE MEMORANDUM
FROM
SOLID WASTE DIVISION**
Phone: (239) 533-8000 Fax: (239) 461-5871

Date: 12/4/2017

TO: Larry Haut
Deputy Inspector General

From: Keith A. Howard, Solid
Waste Division Director

Re: Investigation of Pricing of Solid Waste Scrap Metal

Thank you for the thorough investigation into the County's scrap metal procedures. As noted in the report, all recommendations have been implemented into County practices. If you have any additional questions, do not hesitate to contact us.

Cc: P. Keyes, D. Meurer