

BEFORE THE PROCUREMENT APPEALS BOARD OF THE METROPOLITAN
GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

IN RE:)
)
ECKMAN/FREEMAN & ASSOCIATES)
RFQ# 950602)
)

NOTICE OF APPEAL

Eckman/Freeman & Associates (“EF”), a company with offices in Tennessee and Kentucky which provides medical consulting, disability management and cost containment services, by and through counsel, hereby timely files its Notice of Appeal, stating its intent to appeal the Metropolitan Government of Nashville and Davidson County Procurement Division’s Protest Determination of RFQ 950602, Case Management Services for HR (“Protest Determination”), dated December 28, 2016 (attached as **Exhibit A**). The Protest Determination was received by counsel for EF via email on December 28, 2016.

For the reasons provided herein, the Protest Determination was made in error and is not in accordance with the Constitution, applicable Statutes, the Metropolitan Code, Regulations, the terms and conditions of the solicitation, and the best interests of the Metropolitan Government. Thus, the Protest Determination and award of the RFQ should be reversed and the bidding/proposal process should be reopened amongst the original bidding parties.

ISSUES ON APPEAL

A. Protest Claims Related to Cost (Valued at 30 Points)

To date, the true, comprehensive cost to Metro of the award to Ascential Care Partners, LLC (“Ascential”) has not been determined in accordance with the Regulations to the 1992 Procurement Code of the Metropolitan Government of Nashville and Davidson County, as adopted by The Procurement Standards Board (“Procurement Code”). The Procurement Code requires a detailed analysis of the total cost of ownership for the lifecycle of a product or service; the cost analysis “will consider acquisition cost; transportation in; implementation and start-up costs; on-going maintenance, repair, and support costs; labor, material and overhead costs...” R4.12.010.03.

The cost scoring does not reflect the actual, real cost to Metro of the two bids. Not included in the cost scoring was Ascential’s reported takeover cost for existing files. Ascential quoted a takeover fee of \$1,800 per file for the first year, at 100 files, for a total additional cost of \$180,000. The additional \$180,000 places the actual cost of the Ascential contract to Metro at \$65,500 more than EF in Year #1 alone, with a projected addition of over \$630,000 over the life of the contract based upon the numbers provided.

Ascential was awarded 24.00 out of a total of 30.00 points in the cost category. EF was awarded 20.91 out of a total of 30.00 points in the cost category. Flaws exist in the cost analysis conducted and the standard applied by Metro, flaws which at best result in an inconclusive cost analysis and a worst result in a false comparison of the actual cost to Metro of each of the respective bids. The proposal and bid process, as it relates to cost, has not been conducted in accordance with the Constitution, applicable Statutes, the Metropolitan Code, Regulations, the terms and conditions of the solicitation, and the best interests of the Metropolitan Government.

Not engaging in a discussion phase or a best and final offer process during the analysis of this RFQ and as provided by the Procurement Code has resulted in a baffling and arbitrary cost comparison. Though the process of soliciting best and final offers is not mandatory and is in the Purchasing Agent's discretion under R4.12.040.14.4, for the following reasons it was an error of law to not engage in the best and final offer process as it relates to this particular RFQ: (1) in every single case of a competitive bid proposal during the past twenty-two years that EF has serviced Metro, Metro has engaged in a best and final offer process; it was reasonable that the incumbent, based upon twenty-two years of past performance and practice with Metro, would anticipate and expect a best and final offer process; and (2) a best and final offer process is required in this circumstance to provide clarity and precision of the true cost to Metro due to the uncharacteristic and atypical method of cost analysis which chose to not consider takeover costs in the analysis. To not do so was unreasonable and in contravention with the applicable laws, including but not limited to the Metro Procurement Code.

Similarly, in all prior processes for award of these services, Metro required that bids be made in both hourly and flat rate formats. For the first time and for no known reason, Metro changed its request and requested bidders to choose only one bidding format, either hourly or flat rate. As a result, an "apples to apples" comparison of the true cost to Metro was not achieved in the process. EF stands behind its position that the contract award to Ascential, if upheld, will have a significantly larger financial impact upon Metro and thus requests that Procurement Appeals Board reverse this decision to ensure a process that compares all costs to be incurred by Metro, as is required under the Procurement Code.

B. Protest Claims Related to Business Plan (Valued at 35 Points)

EF has no issues to raise on appeal concerning Business Plan. The evaluation as amended by the Purchasing Agent correctly increased the point award to EF and decreased the point award to Ascential so that now both parties score 30 points each.

C. Protest Claims Related to Capacity (Valued at 20 Points)

Based upon the parties' submissions and all evidence before the Evaluation Panel and the Purchasing Agent, Ascential should not be awarded more capacity points than EF. EF has developed its system, and the required capacity with Metro, based upon Metro's individual needs. Awarding Ascential equal to or more points than EF in the capacity category is in error of the standards of review governing the purchasing process and is arbitrary in consideration of the detail included in the proposals. The appropriate objective analysis would show that EF's capacity is equal to or greater than that of Ascential.

Ascential was awarded 18.00 out of a total of 20.00 points in the capacity category. EF was awarded 16.00 out of a total of 20.00 points in the capacity category. The proposal and bid process, as it relates to capacity, has not been conducted in accordance with the Constitution, applicable Statutes, the Metropolitan Code, Regulations, the terms and conditions of the solicitation, and the best interests of the Metropolitan Government.

D. Protest Claims Related to Firm and Team Experience and Qualifications (Valued at 15 Points)

EF has been in business for thirty-five years and has served Metro's needs for the last twenty-two years, with the majority of the EF staff members dedicated to Metro having served

Metro ten years or more. Ascential was created only five years ago by former EF employees. Ascential stated in its proposal that it contemplates needing to attempt to hire current EF staff members in order to service Metro.

Application of the correct legal standard and a conducting of the required objective analysis could not justify awarding to Ascential a higher score in the category of firm and team experience and qualifications than that of EF. Ascential was awarded 14.00 out of a total of 15.00 points in the firm and team experience category. EF was awarded 13.00 out of a total of 15.00 points in the same category. The proposal and bid process, as it relates to firm and team experience and qualifications, has not been conducted in accordance with the Constitution, applicable Statutes, the Metropolitan Code, Regulations, the terms and conditions of the solicitation, and the best interests of the Metropolitan Government.

An objective analysis is what is required. In addition, based upon the responses of the parties and statements made during the protest hearing, it appears that the parties potentially assigned different meaning to what was requested in the question pertaining to the number of clients serviced by each firm, which potentially resulted in the application of a less than uniform standard in the evaluation process.

CONCLUSION

For the reasons presented herein, the hearing before the Purchasing Agent, and the entire record in this cause, EF submits that the Protest Determination was made in error and is not in accordance with the Constitution, applicable Statutes, the Metropolitan Code, Regulations, the terms and conditions of the solicitation, and the best interests of the Metropolitan Government.

Thus, the Protest Determination and the award of the RFQ should be reversed and the bidding/proposal process should be reopened.

Respectfully Submitted:



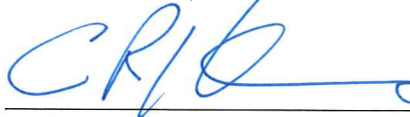
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been sent in the manner indicated below to the following on the 4th day of January, 2017:

Ms. Talia Lomax-O'dneal
Director of Finance
1 Public Square
Suite 106 Nashville, TN 37201

Mr. Jeff Gossage
Purchasing Agent
Suite 112 – Lindsley Hall
730 2nd Avenue South
Nashville, TN 37210



Curtis R. Harrington II



METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

December 28, 2016

Protest Determination of RFQ 950602, *Case Management Services for HR*

Eckman Freeman and Associates (EF) protested Metro's intent to award a contract to Ascential Care Partners, LLC (Ascential). The protest resulted in an administrative hearing held on Thursday, December 22, 2016. The hearing discussions followed closely the letter of protest. The order of protest claims considered in this determination have been altered to correspond with the evaluation criteria rather than the chronological presentation at the hearing. However, every attempt has been made to include all discussion points.

Protest Claims related to Costs (Valued at 30 points):

- EF claimed a procedural error in comparing flat rates with hourly rates as past RFPs required both.
- Additionally, the ACP offer included takeover fees that add an additional \$630,000 over the life of the contract. These additional costs alter the points for the cost criterion in favor of EF.

Purchasing Agent's determination based on discussions at hearing and a review of the offers

This solicitation expressly permitted cost submissions on "Flat rate basis or a [sic] Hourly rate basis". The cost spreadsheet allowed for this comparison.

The takeover costs are not in addition to the costs Ascential proposed but rather in lieu of the full flat rate charged for new cases. It is actually lower than new case fees as some of the work would presumably have been performed by EF. Ascential understood these costs as informational only. EF did not refute the explanation offered by Ascential. The solicitation spreadsheet supported the Ascential position by stating:

"The below cells must be filled out. They are for information purposes and will not be apart [sic] of the cost for evaluation".

These protest claims are dismissed.

Protest Claims related to Business Plan (Valued at 35 points):

- EF was noted as having a weakness for offering only two licensed user accounts, yet EF offers unlimited accounts for Metro HR. However, the two licensed users were in reference to Metro only. EF stated, "Our proprietary software is currently available to Metro via a Citrix client which can be accessed by Remote Desktop. Metro is currently licensed for two users (CSME office)." EF has offered to service Metro with as many licenses as Metro requires, Metro selected the number of two licenses.



- EF was cited with a weakness for having a Tier 4 Data Center, despite the fact this is the highest possible level of capacity and quality. Ascential was comparatively awarded a "strength" for having a Tier 1 Data Center, which is the lowest level of capacity and quality.
- EF was cited for not being able to provide reports as easily as Ascential. However, EF stated that "Metro's dashboard is customized to provide easy navigational to case notes and statistical reports." "EF can interface data with client software in real-time for case notes, reports, and any other data elements requested" and "With remote connection to Aristotle, Metro has access to the weekly/monthly open and closed case report summaries, and billable hours report. EF further stated that "Any number of ad hoc reports may be provided to Metro, upon request and at the desired frequency. The formats may be customized and modified by our IT staff, with data elements added as needed. There is no additional charge for management reports to Metro." Finally, EF stated, "In addition, real time reports are available to Metro CSME and HR staff to access independently through licensure and connectivity to EF case management software, if desired."
- Finally, EF was cited for proposing a "minimum of 24 hours to retrieve a file." However, the 24 hours for case retrieval was for offsite claims prior to 2007 only and the timeframe was a maximum of 24 hours.

Purchasing Agent's determination based on discussions at hearing and a review of the offers

The solicitation offer by Eckman Freeman stated that "Metro is currently licensed for two users (CSME office)". The letter of protest claims that Metro may have as many licenses as needed but that was not offered in the solicitation response. The evaluation committee remark was a statement of fact, not opinion.

The evaluation committee remark citing as a weakness EF's Tier 4 Data Center compared to the Tier 1 Data Center of Ascential was in error on two fronts. First, a tier 4 data center was compared to a tier 1 network carrier. These are not the same. Secondly, and more importantly, a tier 1 anything was viewed by the evaluation committee as being superior to a tier 4 - the inverse being true. The Business Plan was comprised of forty-five (45) questions with an additional thirty (30) sub-questions. Clearly, not every question is worth less than .5 points but if we arbitrarily applied that weight, it would be necessary to **move Business Plan scores up from 30 to 30.5 for EF and down from 32 to 31.5 for Ascential.**

Ease of reporting was an issue. First, EF offers Metro access to their software, Aristotle, via VPN on a Citrix client, accessed by Remote Desktop. Additional customization would be available by request and conducted by EF IT staff. This approach was contrasted by the evaluation committee with the Ascential reports accessible via a secured website. The evaluation committee's conclusion was that this solution provided greater accessibility and was more responsive to their reporting needs.

EF was cited by the evaluation committee for proposing a minimum of 24 hours to retrieve a file rather than a maximum of 24 hours. Additionally, this issue was restricted only to those files older than 2007 but nothing was offered by EF to resolve this issue such as digitizing the data and making it available just as files post 2007. Regardless, if we applied the point weight issue addressed previously this error in the evaluation comments might **move Business Plan scores up from the adjusted 30.5 to 31 for EF and down from 31.5 to 31 for Ascential.**

This protest claim is honored and Business Plan scores are adjusted to total of 31 points for each offeror.

Protest Claims related to Capacity (Valued at 20 points):

- A weakness cited for EF was having only two dedicated case managers. On Page 1 of EF's Capacity description, the question asks for the number of staff members (not case managers) that the applicant will dedicate to work exclusively on the Metro account and the response identified five dedicated staff members, and outlines their names, titles, roles and responsibilities, as well as the number of years they have worked with Metro in a table format. There are two "case managers" and EF's proposal reflects that EF has also dedicated two Social Security Advocates to the team. Social Security Advocacy accounts for more than half of the services utilized for this RFP, so it is significant that all of these individuals are dedicated to the service and this fact should not be considered a weakness. Ascential's Capacity was identified as providing numbers of staff but not names, titles, or specific roles.
- Additionally, Ascential did not provide more exclusively dedicated case managers to Metro than did EF.

Purchasing Agent's determination based on discussions at hearing and a review of the offers

This contract is for Case Management. While the question in the solicitation specifically requested the number of staff members, both EF and Ascential declared the number of case managers in the Capacity sections of their offers. As it related to dedicated staff members, EF states that there will be a continuation of the same Program Manager and case managers as currently provided and then goes on to identify five (5) individuals and in another section mentioned eight (8) additional nurse case managers and two (2) social workers for a total of fifteen (15). Ascential's response to the same is a list of twenty-four (24) dedicated staff members.

The question referenced in the letter of protest does not call for a resume or names for these individuals, only title and roles.

These protest claims are dismissed.

Protest Claims related to Firm and Team Experience and Qualifications (Valued at 15 points):

- Ascential received more points but they are a relatively inexperienced company. EF went on to state that they are objectively more experienced and qualified than the awardee.
- Ascential provided a list of clients from 2015 and not 2011 as requested in the solicitation.
- The evaluation committee's comments specifically stated that Ascential has "a higher number of clients and high percentage of public sector customer. EF disputed this affirmation.

Purchasing Agent's determination based on discussions at hearing and a review of the offers

The evaluation criterion is for firm and team experience and qualifications. Unless the protest statement of inexperience is specifically made relative to company comparisons and not team comparisons, this claim cannot be supported. The evaluation committee felt that Ascential better demonstrated their firm and team experience and qualifications.

The request for a 2011 client list was a typo from a previous solicitation. Ascential provided the most recent list from 2015. This was not counted in favor of Ascential nor counted against EF. The typo by Metro was waived as a minor informality as both firms satisfied the intent of the solicitation question.

The issue of client count was debated but Ascential stands by its claim of clients and Metro accepts that claim. EF did not offer information that disproved the Ascential submission.

These protest claims are dismissed.

Purchasing Agent's Final Determination

One evaluation criterion must be adjusted and that is the Business Plan. Eckman Freeman is adjusted upward to 31 points and Ascential is adjusted downward to 31 points. No other adjustments are warranted. This adjustment does not alter the award (Ascential with a total score of 87 and Eckman Freeman with a total, favorably rounded, score of 81). Therefore, the award to Ascential Care Partners, LLC stands and the protest by Eckman Freeman and Associates is dismissed.

Respectfully,



Jeff L. Gossage C.P.M.
Purchasing Agent
The Metropolitan Government of Nashville and Davidson County

Cc: Contract Solicitation File

Notification:

The protest decision of the Purchasing Agent may be appealed within seven (7) days of the written decision to the Appeals Board. The notice of appeal must be mailed via either U.S. Mail or hand-delivered to the Office of the Director of Finance and the Purchasing Agent prominently stating "Notice of Appeal."

A written decision will be issued by the Board which states the extent to which, the decision by the Purchasing Agent was in accordance with the Constitution, Statutes, the Metropolitan Code, Regulations, the terms and conditions of the solicitation, and the best interests of the Metropolitan Government.

This information is a brief, layman's summary of the processes. Please refer to the Code & Procurement Regulations for official information on these administrative rights. Those administrative rights may be found at www.Nashville.gov under the Procurement section of Finance for the Metro Code and Procurement Regulations that govern Protests and Appeals.