

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

4 IN RE: ASHLEY KING,
5 RFQ 980656
6 Appellant

7 TRANSCRIPT OF PROCEEDINGS

8
9 MAY 31, 2017

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11 APPEAL HEARING

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24 PATRICIA A. NILSEN, RMR, CRR, CRC
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APPEARANCES

Appellant:

ASHLEY KING

For the Board:

GENE NOLAN
CYNTHIA CROOM
NICKI EKE
SCOTT POTTER

For the Purchasing Agent:

JEFF GOSSAGE

ALSO PRESENT: KATIE DOWNING
MACY AMOS

Reported By:

PATRICIA A. NILSEN, RMR, CRR, CRC
TN Certified Court Reporter
Alpha Reporting Corporation
162 Rosa Parks Boulevard, Suite 10.
Nashville, Tennessee 37203
(901) 834-1777

1 MR. NOLAN: Let's go ahead and
2 convene this meeting of the appeals board to hear
3 the appeal of -- of the nonresponsiveness of the
4 proposal on short-term rental program consultant.

5 And, Nicki, if you'd go ahead
6 and read the legal language.

7 MS. EKE: Sure.

8 THE APPELLANT: Before you do that,
9 could you introduce everybody and explain exactly
10 what the process is so I have a clear understanding
11 about the procedures here?

12 MR. NOLAN: Do you want to do that?

13 MS. EKE: Sure. These are the
14 members of the procurement appeals board.

15 THE APPELLANT: Could you introduce
16 them and tell me who they are.

17 MS. CROOM: I don't mind saying who I
18 am.

19 I'm Cynthia Croom. I'm the
20 executive director with Metropolitan Action
21 Commission here in Nashville.

22 MR. COBB: I'm Terry Cobb. I'm the
23 director of the department of codes administration.

24 MR. NOLAN: And I'm Gene Nolan,
25 deputy director of finance. And I'm filling in for

1 Talia Lomax-D'neal, chairman of this appeal.

2 MS. EKE: My name is Nicki Eke. I'm
3 an attorney with the Metro Department of Law. And
4 I advise the procurement appeals board.

5 MR. POTTER: I'm Scott Potter,
6 Director of Metro Water.

7 THE APPELLANT: And you two are board
8 members? Because you all --

9 MS. EKE: Everyone here is a board
10 member.

11 THE APPELLANT: Board of?

12 MS. EKE: Procurement appeals board.

13 THE APPELLANT: How many members are
14 on the board?

15 MS. EKE: There are five members.

16 THE APPELLANT: And how many are
17 here?

18 MS. EKE: Four.

19 THE APPELLANT: Okay. All right.
20 Are we waiting on another member?

21 MS. EKE: No one else. Someone may
22 or may not show up, but we have a quorum, so we're
23 ready to proceed.

24 THE APPELLANT: All right. Who are?

25 MS. DOWNING: I'm Katie Downing. I'm

1 with the Department of Law. And I represent the
2 purchasing agent. Macy Amos is going to be taking
3 my position, and she's just here to observe.

4 THE APPELLANT: Who are these people?

5 MR. PITTMAN: Genario Pittman,
6 finance administrator within the procurement
7 division.

8 SPEAKER: I'm Scott Gee, a contract
9 specialist within the procurement division.

10 SPEAKER: My name is Brad Wall
11 (phonetic), a contract specialist in the
12 procurement division as well.

13 SPEAKER: I'm Terry Trademoor
14 (phonetic), finance administrator with the
15 division.

16 MS. HERNANDEZ: Michelle Hernandez,
17 chief diversity officer for the city.

18 THE APPELLANT: I'm Ashley King. I'm
19 the yahoo who put in the bid.

20 Now, explain to me how this procedure
21 works so I have a clear understanding about what
22 the rules are and what the outcome will be.

23 MS. EKE: Well, basically, the first
24 thing is that I'll read appeal of decisions, which
25 tells you how you can appeal decisions of this

1 board, if, after the decision is made, you wish to
2 do so.

3 After that, essentially the chair is,
4 of course, the one that moderates the meeting and
5 takes over and actually determines when each person
6 goes and is able to speak. Generally, there's a
7 presentation by the purchasing agent, and then
8 presentation by the appealing party, who is you.
9 And then if there's any other interested parties --
10 I don't see anyone present -- they may also make a
11 presentation. And then the board deliberates.

12 The role of the board is just to
13 determine whether this particular solicitation and
14 this award was done in accordance with applicable
15 law. So if the board finds that this was done in
16 accordance with applicable law, then they will
17 uphold the decision of the purchasing agent. If
18 the board finds that this was not done in
19 accordance with applicable law, then the board can
20 determine what to do next, whether to overturn the
21 award or issue any other appropriate instructions
22 that it deems fit.

23 THE APPELLANT: And when you said
24 "applicable law," are there rules and -- are there
25 laws, or is there a difference between like a rule

1 from -- that Metro has, or is there a difference
2 between rules and laws or --

3 MS. EKE: Applicable law includes the
4 procurement code, the procurement regulations. And
5 then state law, to take state law has any bearing
6 on any particular issue that's before this board
7 today.

8 THE APPELLANT: Okay. And when you
9 mentioned state laws, I've been hearing a lot of
10 things about state laws. Have there been any laws
11 passed or not passed since this application was
12 made?

13 MS. EKE: Not that I'm aware of. And
14 they will not have any bearing on this appeal.

15 THE APPELLANT: Okay. Can I get a
16 history at some point from the procurement officer
17 as to how this particular procurement came about so
18 I have a clear understanding about the history,
19 incumbent bidders and things along those lines?
20 Will they be available to me?

21 MS. EKE: Well, are you asking for
22 the record of this procurement?

23 THE APPELLANT: Well, I want to --
24 from my understanding, this contract was awarded to
25 a particular company before, then it went back and

1 bid it out, my understanding. I just want a
2 history of how this procurement came to be bid in
3 the first place, because it was previously awarded
4 to a company, from my understanding.

5 MS. EKE: Well, this is a new
6 solicitation, and that's what's before this board
7 today.

8 THE APPELLANT: But that's not really
9 the truth. From my --

10 MS. EKE: Let me stop you.

11 THE APPELLANT: Don't stop me. Don't
12 stop me.

13 MS. EKE: There is a procedure here.
14 You --

15 THE APPELLANT: I'm asking about the
16 procedure.

17 MS. EKE: You are the appellant. You
18 don't control what happens.

19 THE APPELLANT: I'm asking about the
20 procedures. I want a history of how this bid came
21 to be.

22 MS. EKE: This is a quasi-judicial
23 proceeding.

24 THE APPELLANT: I understand.

25 MS. EKE: The chair is the one that

1 determines.

2 THE APPELLANT: Mr. Nolan, can I --

3 MR. NOLAN: Let me ask you to --

4 let's proceed with the presentation. Part of the
5 presentation that Mr. Gossage will give will
6 address this particular solicitation.

7 THE APPELLANT: That's all I was
8 asking.

9 MR. NOLAN: Then if you have
10 questions, you can do that as a part --

11 THE APPELLANT: But as part of that,
12 I'm asking for a history of how the bid came to be,
13 because that's important.

14 MR. NOLAN: But just remember, it's
15 regarding this solicitation. Now, you can ask
16 questions when he's through, if you want to.

17 THE APPELLANT: I was trying to make
18 it easy for him put it up front how he got here.

19 MR. NOLAN: I think that's what we'll
20 do. We'll just go ahead and -- wait. I'm getting
21 ahead of myself. There's the appeals that you need
22 to read.

23 MS. EKE: Appeal of decisions from
24 the procurement appeals board. Pursuant to the
25 provisions of Section 2.68.030 of the Metropolitan

1 Code of Laws, please take notice that decisions of
2 the procurement appeals board may be appealed to
3 the Chancery Court of Davidson County for review.
4 Under common law writ of certiorari, an appeal must
5 be filed within 60 days after entry of a final
6 decision by the board. Any person or entities
7 considering an appeal should consult with an
8 attorney to ensure that time and procedural
9 requirements are met.

10 THE APPELLANT: Can I get a copy of
11 that?

12 MS. EKE: Later, you can.

13 THE APPELLANT: All right. I just
14 want to make sure before I leave I get a copy.

15 MR. NOLAN: All right. Let's have
16 Mr. Gossage make his presentation, which is going
17 to deal with the solicitation and what ruling he
18 made and why.

19 THE APPELLANT: I would like for it
20 to include the history of how the solicitation came
21 about as well.

22 MR. NOLAN: I think that's what we'll
23 get --

24 THE APPELLANT: Thank you.

25 MR. NOLAN: -- on this solicitation.

1 THE APPELLANT: Thank you.

2 MR. GOSSAGE: All right. The two
3 departments were requesting support for this, that
4 would be codes for looking at violations related to
5 misuse of the short-term rentals, and the treasury
6 department, seeking assistance in assessing taxes
7 for those properties as they're rented out.

8 Other departments were touching
9 this, but those are the two primary customers
10 in this. Solicitation was developed based on
11 their needs to do enforcement and to do
12 tracking of taxation. So we could collect
13 those taxes.

14 What was issued was a solicitation
15 for short-term rental program consultant. It was
16 not for software, as several suppliers proposed on
17 software. They were looking at having assistance
18 in doing the work, not just looking at software.
19 The solicitation had a series of things that were
20 requested and asked for detailed responses to those
21 solicitation requests. They did include -- I'll
22 walk through those.

23 And I handed you out a little
24 walk-through. The second page kind of picks
25 up on this. And what I want to show you is at

1 the very beginning of that, it talks about
2 information security agreement. Information
3 security agreement is a critical piece of the
4 documentation because anything that could
5 potentially hit our system puts our
6 infrastructure at risk. And so IT has
7 developed this along, working with the
8 department of law, to identify those sources
9 of vulnerability and receive responses. Those
10 responses could be it doesn't touch your
11 system. It integrates completely with your
12 system. So the degree of information would be
13 different between those.

14 It is required that they put in here,
15 as almost like an affidavit, although not quite,
16 but it is part of the agreement, so that if
17 something did happen afterwards, we would know
18 where the liability sat and what -- how we might
19 follow up on that.

20 What you see from the top of that
21 down to the box is the solicitation request related
22 to the information systems agreement. And in the
23 middle, in bold, as is in the solicitation, it says
24 failure to attach your completed ISA may result in
25 your offer being deemed not responsive. That was

1 the response.

2 In the box at the bottom is the
3 response submitted by --

4 THE APPELLANT: Ashley.

5 MR. GOSSAGE: All right. Okay. By
6 Ashley.

7 It says, we have read the ISA
8 agreement attached and the ISA terms and
9 conditions are accepted.

10 There was no ISA agreement attached,
11 however. It was just as a comment. And I believe
12 you also received the systems printout from Nicki
13 that corresponds to that, because these boxes will
14 have the same information we received.

15 In the cost criteria, we went through
16 it and asked for a variety of things that we need
17 to collect information on. We need to see warranty
18 information, licensing, any kind of cost cycle,
19 cost life cycle issues. We required a cost
20 spreadsheet to be completed. We asked for small
21 and minority participation or small and --

22 THE APPELLANT: Can I interrupt you.

23 MR. GOSSAGE: Yes.

24 THE APPELLANT: From my understanding
25 I was deemed un -- well, don't huh. That's

1 impolite. That's impolite.

2 MS. EKE: What I'm trying to tell you
3 is there's an order to these proceedings. You need
4 to let him finish.

5 THE APPELLANT: Hold on a minute.

6 From my understanding, I was
7 deemed irresponsible for the information
8 agreement, correct? Is that correct?

9 MR. GOSSAGE: You were deemed
10 nonresponsive, and that was one of the criteria
11 that were given, yes.

12 THE APPELLANT: So why are we talking
13 about --

14 MR. COBB: During these proceedings
15 Mr. Gossage has a turn to speak and present to the
16 board. And the interruptions by Mr. -- of
17 Mr. Gossage are causing me some concern, because
18 I'm not able to follow what Mr. Gossage is telling
19 me.

20 THE APPELLANT: Me, too. I'm there
21 with you. I'm there with you.

22 MR. COBB: You will be granted your
23 turn to speak.

24 THE APPELLANT: Why is he talking
25 about stuff outside the scope of why I was deemed

1 nonresponsive?

2 MS. CROOM: When you have your
3 opportunity to speak --

4 THE APPELLANT: But I'm not clear
5 about the procedure. Why is he responding to
6 something outside of the scope of the
7 unresponsiveness?

8 MR. NOLAN: Because there's a lot
9 that goes in his determination of
10 nonresponsiveness.

11 THE APPELLANT: I was only deemed
12 irresponsible for that one section.

13 Is that correct, Mr. Gossage?

14 MR. NOLAN: Let's listen to the
15 presentation, and you'll have his full story, and
16 then you can respond to it.

17 THE APPELLANT: Okay.

18 MR. POTTER: I'd like to get you to
19 agree to not interrupt him. Can you do that for
20 us, please?

21 THE APPELLANT: Well --

22 MR. POTTER: Is that a yes or a no?

23 THE APPELLANT: I'm going to
24 interrupt if I think that something is not fair.

25 MR. NOLAN: Save it for your --

1 THE APPELLANT: But this is a
2 nonjudicial -- this is a nonjudicial procedure.

3 MS. EKE: This is a quasi-judicial
4 proceeding.

5 THE APPELLANT: So that means it's
6 nonjudicial?

7 MS. EKE: It is quasi-judicial.

8 THE APPELLANT: Is it judicial or
9 nonjudicial?

10 MR. NOLAN: Please.

11 MS. EKE: The chair is like the
12 judge, and the chair is the one you need to listen
13 to. And he's the one that will tell you when you
14 can speak.

15 MR. NOLAN: So, please, hold your
16 remarks. Let's listen to this, and we'll give you
17 an opportunity.

18 All right. Jeff?

19 MR. GOSSAGE: I was actually reading
20 back over. Because I want to be -- well, let me go
21 ahead with what I have here. The cost spreadsheet
22 was not attached. There were no costs identified
23 and any portion of that. The sheet is required so
24 that we can compare costs. There could be other
25 revenue sources. And the cost sheet may put down

1 zero cost from us, because they're selling
2 advertising on the piece. I don't know how you
3 would get revenue, but there could be other options
4 to a revenue source. There were no costs
5 submitted.

6 When we reached the part that talks
7 about the project approach and process, which is 35
8 points -- and that talks about things about the SDR
9 property and address identification, consolidation
10 of records, compliance, tracking, monitoring, all
11 those types of things -- it was a fairly lengthy
12 portion. The SIS statement came back in, or ISI;
13 it switches back and forth here. They'll work with
14 the hosting sites to meet the -- and exceed the
15 various regulatory -- regularly occurring reports
16 and information. We don't know how we're getting
17 those reports. We don't know what those reports
18 are. They didn't demonstrate their knowledge.
19 They say they have demonstrated it, but we don't
20 know how. And that the hosting sites, they'll work
21 with them. I'm not sure what that means.

22 They did say they attached those
23 things. We didn't see any of those documents. We
24 are confirming team and qualifications. Basically
25 it's a one-man operation. Mr. King would be doing

1 that work. So -- but there was no information
2 provided about him or about how this would be
3 accomplished. Again, we're looking for
4 consultation, not for software and package. And at
5 this point in the proposal, we don't even know what
6 is being proposed. And so ...

7 And the final part was the
8 references. We received no references, even though
9 they acknowledged, yes, they had sent those and
10 attached it. We didn't receive those.

11 The final page is actually an image
12 from the submission that shows where they had an
13 indication even in the system, when they were
14 submitting, that there were documents that were not
15 pressed. It doesn't stop you from being able to
16 submit a proposal. It's just warning you ahead of
17 time, we've got things that are missing.

18 The proposal came in. It was one of
19 five. We deemed it nonresponsive because of the
20 host of issues in there.

21 I then received a letter from
22 Mr. King that went through several things.
23 One is that the ordinance for regulating
24 short-term rentals is unconstitutional. I
25 can't make a determination on

1 unconstitutionality. I checked with the
2 Department of Law, and Department of Law told
3 me they were unaware of any issues as well.
4 And so in the letter, I dismissed that as one
5 of the issues because I'm not aware of any.

6 Metro's remedy is in flux. I don't
7 know what that means. I still don't know what that
8 means. We certainly have direction from the
9 counsel as to what direction to go. I have two
10 departments giving me very concrete needs that need
11 to be met. So the remedy did not seem to be in
12 flux. So I dismissed that claim.

13 The solution that was contemplated by
14 ISI did not require Metro's information. Only
15 problem is it did require the document. Even if
16 the answer does, we're not going to do that. We
17 don't touch your system, because that is a
18 statement of -- if you will, an affidavit, so that
19 if we have to come back on liability issues, we
20 could follow up with that, and later stages, if
21 something should be there.

22 He then states that the solicitation
23 contemplated did not require any new ordinances,
24 concerns about the hospitality lobby, Metro
25 citizens, property owners, renters, advocates for

1 homeless, affordable disaster and charitable
2 housing.

3 It wasn't in the scope of the
4 solicitation. I don't know what that is. That was
5 dismissed because it had no bearing on any kind of
6 decision.

7 The final thing was the solicitation
8 was tailored -- was a tailored solution only to
9 host compliance, to whom we had already awarded
10 something of more than \$1 million. That's not
11 correct.

12 What was drafted was a needs
13 assessment by two different departments
14 combined into a single solicitation and was
15 listed as we need this as a consultant. We
16 did not want software, and we needed something
17 to consider it.

18 Mr. King is correct in that the
19 only determination in that letter of protest
20 had to do with the ISA, because it wasn't
21 present and was a requirement of. However, I
22 can sit back and say beyond that, we had
23 nothing else to consider either. We had no
24 way to consider any other aspects of what it
25 is to offer. In fact, I don't know what is

1 being offered.

2 And so we had other -- five
3 others that were fairly large documents coming
4 in that defended how they would be approaching
5 things. Even those that didn't meet the need
6 that we were looking for in a consultant
7 offered substantial information about how
8 their systems would work so that an analysis
9 could be made from one system to the other.

10 I believe four or five people on
11 the evaluation board evaluated those; none of
12 those being procurement. Procurement only
13 served as a facilitator of that discussion.
14 And they scored those. They actually are the
15 ones that initially brought in the concern
16 about noncompliance -- or about
17 nonresponsiveness. And I concurred with that.

18 I've reviewed this three times
19 now. I have to stand with that decision and
20 recommend to the board that the determination
21 of nonresponsiveness stands.

22 MR. NOLAN: All right. Thank you.

23 Mr. King --

24 MS. CROOM: I have a question before
25 we go to Mr. King.

1 Where is the letter that was
2 sent to Mr. King that indicates what he was --
3 do we have a copy of that? Is that in what we
4 have?

5 MR. GOSSAGE: I thought that was
6 sent, but I can -- you've got them?

7 MS. CROOM: Could I see that?

8 MS. EKE: There are two letters.

9 MS. DOWNING: The ones Mr. King sent?

10 MR. NOLAN: I think there was one he
11 sent.

12 MS. CROOM: No, I needed to see --

13 MS. EKE: The one he sent?

14 MS. CROOM: I need to see what the
15 actual -- the specific reason that the bid was
16 considered nonresponsive. I need to see the letter
17 sent to Mr. King.

18 MR. GOSSAGE: You do have it now?

19 MS. CROOM: Yes.

20 MR. GOSSAGE: I think there were five
21 points. None of those are addressing the other
22 issues. They're addressing -- what I'm responding
23 to there are his elements of protest, not --

24 MS. CROOM: Right. That wasn't my
25 issue. I just needed to see the actual letter that

1 was sent to Mr. King, saying what he was considered
2 nonresponsive. It says specifically, this
3 submitted proposal was not responsive due to not
4 including the required ISA questionnaire and not
5 responding to requested evaluation --

6 MR. GOSSAGE: That's the initial
7 letter --

8 MS. CROOM: That was sent to --

9 MR. COBB: The initial letter?

10 MR. GOSSAGE: That's the initial
11 letter that goes out.

12 MR. COBB: Where's the letter you
13 sent following the protest?

14 MS. CROOM: That's this one.

15 MR. GOSSAGE: And that is responding
16 only to the protest?

17 MR. COBB: Protest.

18 MR. GOSSAGE: Correct.

19 MR. NOLAN: Any other questions of
20 Mr. Gossage?

21 MR. COBB: My question might be for
22 Mr. Gossage or might be for our legal counsel. The
23 only thing really before this board is the appeal
24 of the purchasing agent's decision relative to the
25 protest.

1 MS. EKE: Yes, sir.

2 MR. COBB: Is that correct?

3 MS. EKE: Yes, sir.

4 MR. COBB: Then ordinarily, we get
5 copies of what that protest decision was prior to
6 getting here. So we've got some sense of it.
7 Could we get copies run of this for the board
8 members?

9 MR. GOSSAGE: I can send a staff
10 member up to do that. There's another one, too.
11 I'm sorry. We would have normally --

12 MS. DOWNING: I printed them off of
13 the invite.

14 MR. COBB: As an attachment to this?

15 MS. DOWNING: Kind of attached in the
16 body.

17 (Pause)

18 MR. NOLAN: Do we need to wait for
19 that letter, or can we go on to Mr. King?

20 MS. EKE: It's up to you.

21 MR. NOLAN: All right. Mr. King, I
22 wanted to point out that you have a copy of the
23 presentation Mr. Gossage made and that you're open
24 to speak to the concern of the responsiveness of
25 your proposal.

1 THE APPELLANT: First, I'd like to
2 thank everybody for being here. And I realize it's
3 not the most pleasant job, you know. I realize
4 that. And I'm very confrontational, not that to
5 be -- you know, just hard or anything like that,
6 but I really want to try to get the best possible
7 solution for Metro. I live here. I pay taxes
8 here. And I really want to see the best outcome
9 for my community.

10 From my understanding -- and maybe I
11 need to be corrected -- Metro had originally
12 awarded a contract to Host Solutions. That was my
13 understanding. And then they decided to withdraw
14 it and bid it out. It's my understanding the
15 original bid came in -- or wasn't bid, but the
16 original contract was for \$1 million, and now it's
17 half a million dollars.

18 My particular solution didn't
19 require a "big brother" type of approach. It
20 required working with the hosting sites
21 themselves, the networks; Airbnb, HomeAway and
22 others, only three or four of those, each, and
23 99 percent of all the people who are doing
24 short-term rentals and doing the collection of
25 taxes as they already do on the sites

1 themselves, doing the compliance for codes on
2 the sites themselves. Not having any need to
3 interact at all with Metro's systems and
4 simply providing payment in a report. And a
5 simple e-mail to Metro. That was the
6 solution. It's being done in other cities.
7 It would be done here.

8 In fact, the State of Tennessee
9 was contemplating a bill that would require
10 that. Still are, really. And that was my
11 solution. You know, didn't require this "big
12 brother," hammer type of approach. They only
13 work with four or five vendors to collect the
14 taxes, do permitting on the site and submit
15 the taxes and reports. I thought it was an
16 elegant solution when it had been done in
17 other places, and I thought it would probably
18 be best for here in Nashville. And my bid was
19 a zero bid, requiring the cost to Metro, and
20 all the sites themselves would collect the
21 fees and have a small fee that they would
22 charge all the people who participated on
23 their sites; very, very small, because they
24 want to keep the areas of injury very low and
25 to submit the funds to Metro. In my opinion,

1 it's a better solution; simple, elegant.

2 MR. NOLAN: And what was -- based on
3 that, what was your reaction on the ISA?

4 THE APPELLANT: On the ISA, I thought
5 I had submitted -- from him saying he didn't
6 receive any information from me, it appears that
7 there might be a glitch in our communication.
8 Probably the reason why I didn't want to deal with
9 it. I didn't require one. I don't need any
10 information sharing with Metro. I thought it would
11 be problematic for a number of reasons. And any
12 information I could get from Metro I could probably
13 get in a better form and a better package from a
14 third party, to be absolutely honest with you.
15 That what was my understanding.

16 And the sites themselves, the
17 network orchestrators -- Airbnb, HomeAway --
18 were happy to collect taxes and provide a
19 permitting form or portion on their site.
20 They want to have it, whereas a lower -- low
21 barrier of entry in order for people to come
22 in and participate, jump in, jump off and
23 collect revenues. That's -- you know, that's
24 their model. They want to keep it simple.

25 And I understand that there are

1 a lot of other forces involved here. There
2 are other players in the short-term rental
3 community who want to kill it. Some want to
4 expand. There are a lot of other moving
5 pieces, and I understand that completely.

6 My solution was simply to have
7 the network orchestrators collect the taxes,
8 pay the fees, do the permitting, right there
9 on the site. Just put your address in and
10 everything is done. Know where you're at;
11 boom, boom, boom, collect the fees, right
12 there. And simply send Metro a check. If
13 there are problems in terms of people not
14 complying, then report it to the -- you know,
15 type in the address, "we're having trouble
16 with this," whatever, and they'll take care of
17 it right there on the site, because they don't
18 want the problem. You know, suspend them and
19 do whatever you need to do.

20 But that was the solution. You
21 didn't need a "big brother" type of approach,
22 where we go and try to determine who is an
23 occupant and a resident of this house and
24 they're already staying here. It's just --
25 you know, when you look at it, it's kind of

1 crazy. You going to try to determine who --
2 are you living at this address? Are you not
3 living at that address? How many months are
4 you living here? Is this rental for 31 days
5 or 29 days, 32 days? It's a lot of minutiae
6 that would get -- become very, very
7 complicated.

8 And rather than stepping into
9 that, I said, wait a minute, let's back off.
10 There's a more elegant solution, where you
11 only have to work with three or four players
12 and you're able to accomplish everything you
13 want and probably collect more revenue, too,
14 and have zero costs to Metro.

15 MR. NOLAN: Okay.

16 THE APPELLANT: And I thought that
17 was very important. I want to save the taxpayers
18 money.

19 MR. NOLAN: Any questions for
20 Mr. King?

21 MS. CROOM: Well, I guess there were
22 a couple of things that came to my mind as you were
23 talking, and then listening to Jeff.

24 I guess one of the things I was
25 wondering: Was this your first time bidding

1 with Metro? Was this a new process for you in
2 terms of just doing a bid, submitting a bid to
3 Metro?

4 THE APPELLANT: I've helped others
5 with it, but this was my first bid of this
6 particular type, too.

7 MS. CROOM: Okay. And then I guess
8 the next question I have for you was: You were
9 mentioning that the ISA questionnaire, that you
10 think you had submitted it; or you just felt like
11 the response you gave was sufficient and you didn't
12 need to submit anything after that?

13 THE APPELLANT: I thought I had
14 submitted some information to him. Evidently there
15 may have been something where he didn't get it or
16 something along those lines. If so, I can go back
17 and look. Needless to say, that happens when
18 you're working with different systems. You know,
19 they have a system that you plug into. My computer
20 has to be compatible to their computer. And
21 sometimes information sharing can be very
22 complicated. That's the reason why you try to, you
23 know, keep it simple.

24 MS. CROOM: I don't have anything
25 further. Thank you.

1 THE APPELLANT: And if that were the
2 case that they didn't get the information, if they
3 had asked me, I would be happy to, you know, come
4 back. But my solicitation, my response was zero,
5 because it was a better way to do it.

6 MR. NOLAN: Any other questions?

7 THE APPELLANT: And let me follow up
8 on that. And that led to my talking about the
9 incumbent, Host compliance, because in my opinion
10 solicitation seemed to be tailored to their
11 solution. And I know that that's not always the
12 intent, but sometimes that happens, all right,
13 because you ask for -- you know, what's the best
14 way to fill this glass of water? Go to the sink
15 and fill it with water, you know. But there might
16 be a better way, but we assume that that's the only
17 way to do it. So we tailor our solicitation. Not
18 intentionally, but sometimes with -- you know, kind
19 of bias to what you think you want, because that's
20 the way you perceive the solution.

21 And I'm saying there's another
22 solution out there, one that saves Metro
23 money, and one that provides better outcomes.

24 MR. POTTER: I just want to make
25 sure, Mr. King, that you understand Mr. Cobb's

1 comment earlier about how before this board is a
2 determination whether or not the procurement rules
3 were followed or were they not followed.

4 Do you understand that's before
5 the board?

6 THE APPELLANT: Well, when you talk
7 about the procurement rules being followed, I guess
8 that's subjective. Depends on how you -- you know,
9 it's not either yes or no. Sometimes there may be
10 minutiae in between. And I'm saying that to the
11 best of my knowledge, I followed all the rules.
12 And he's saying, no, I didn't.

13 And I'm saying, well, maybe
14 there's something in between, because I don't
15 require any information sharing with Metro. I
16 don't want it. In fact, I'm running away from
17 it. But I think I can still -- based upon
18 solutions being offered in other
19 municipalities, I think there's a better way.

20 And what I'm saying is Metro,
21 because of its history with Host Compliance,
22 had already decided upon using Host
23 Compliance, came to this procurement with that
24 in mind; meaning that, you know, I don't think
25 Host Compliance, to my knowledge, they were

1 not the lowest bidder. And no other -- did
2 any of the other bids comply?

3 MR. GOSSAGE: There were five
4 submissions. Four were determined to be responsive
5 to the submission and scored based on their merit.

6 THE APPELLANT: Okay. And of those
7 four, I assume the lowest bidder got it?

8 MR. GOSSAGE: No. It is the highest
9 score of all selection criteria, cost being one of
10 those factors. I believe 35 points was the way it
11 was decided.

12 THE APPELLANT: And I understand
13 that. But when you structure a solicitation based
14 upon a certain incumbent, then of course they're
15 going to score higher. That's really what I'm
16 saying. Of course they're going to score higher,
17 because the solicitation is flawed. It was based
18 upon getting Host Compliance. They couldn't lose.
19 And, you know, I think you should really consider
20 that.

21 Maybe, you know, maybe that's
22 something that you know, in sincerity, that
23 you should look at, because you gave them
24 \$1 million contract at first. Am I correct?

25 MR. GOSSAGE: I want to be careful

1 about a couple of things. One, the first thing,
2 department gives no one anything, nor do they write
3 the scopes of work that are defining the needs that
4 were assessed, nor do they score and determine the
5 likely candidate for those. They serve as a
6 facilitator of the process. And so in that regard,
7 I'm fairly agnostic about who is selected, as well
8 as -- but my opinion on cost really doesn't matter,
9 so I don't always push the cost part.

10 But you have to involve the
11 criteria as they're defined. And the cost was
12 evaluated here according to the process that
13 was set in force.

14 THE APPELLANT: So can I get a
15 history of Metro's relationship with Host
16 Compliance, so I'm clear? Maybe I'm in left field
17 here.

18 MR. NOLAN: Well, more generally is,
19 what's the basis for the solicitation? The
20 solicitation itself was based on what cove's
21 finance treasury needed. And it was submitted to
22 the counsel as a first method of procurement. And
23 counsel wanted to see a more competitive process.
24 And that's what was -- then started this
25 solicitation. This was a competitive process. It

1 returned five responsive --

2 MR. GOSSAGE: Four responsive.

3 MR. NOLAN: Four responsive and
4 yours.

5 Of those, some proposed alternate
6 approaches were what Metro outlined in the
7 solicitation request, but provided all the
8 information to back that up. And the decision was
9 made to go with the one that best met the needs of
10 those Metro departments.

11 So what we're here to decide is:
12 Did that meet all the requirements of a
13 competitive, appropriate solicitation?

14 THE APPELLANT: And, Mr. Nolan, I've
15 known you for a long time, all right? You've been
16 in finance for a long time.

17 MR. NOLAN: Yes.

18 THE APPELLANT: Sometimes the
19 procedure has a history that might lead to certain
20 bids having an -- certain solutions having an
21 advantage over other solutions. And I'm saying in
22 this particular bid, because there had been a
23 relationship between Host Compliance and Metro
24 government, that solicitation seemed to be tailored
25 for their solution. And that's the reason why they

1 ended up getting it, even though they weren't the
2 lowest bidder, all right?

3 MR. NOLAN: Well, I appreciate your
4 perspective. But the issue here is whether or not
5 your proposal was responsive and the appeal of
6 that.

7 THE APPELLANT: Okay.

8 MR. NOLAN: As to the rationale
9 between the selection --

10 THE APPELLANT: I understand.

11 MR. NOLAN: -- that's not the issue
12 here.

13 THE APPELLANT: I understand, but
14 their solution required certain A, B, C, D. My
15 solution didn't require that information sharing
16 contract. I didn't need it. That's what's before
17 the board. And I'm saying that I didn't need it,
18 didn't want it, still don't seem to think it's
19 necessary. Thus I did not contemplate it in my
20 solution. What I'm saying is I think that my bid
21 and the other bids were penalized for not being
22 Host Compliance.

23 MR. NOLAN: I understand your
24 perspective, but there were other bids that had all
25 the alternative solutions different from Host

1 Compliance, but they at least met the requirements
2 of the solicitation. The issue here is whether or
3 not yours met the requirements of the solicitation.

4 THE APPELLANT: And from my
5 understanding, the only thing at issue from my
6 understanding for this board is the information
7 sharing agreement. Is that correct, sir?

8 MR. GOSSAGE: No, that is not
9 correct.

10 THE APPELLANT: Well, I wasn't
11 informed of anything else.

12 MR. GOSSAGE: Yes, you were. The
13 determination was -- and it's spelled out in here,
14 specifically -- the submitted proposal was
15 nonresponsive due to not including the required ISA
16 questionnaire and not responding to the requested
17 evaluation criteria as specified in the
18 solicitation. That was the determination of
19 nonresponsiveness.

20 You sent in a letter of protest that
21 addressed the areas that I mentioned earlier on
22 unconstitutionality, Metro's remedy in flux, on
23 down that list. And the protest response was in
24 direct response to your questions or your concerns,
25 not to my original letter, because you didn't raise

1 those issues.

2 But even today, as I went over those
3 things, the response is there is nothing here for
4 us to have evaluated. This is a classic
5 nonresponsive submission.

6 THE APPELLANT: Can you look to see
7 if I -- if there was an attempt to send you a file,
8 an attachment to that? Because when I submitted
9 the bid, there's a portion there where you attach
10 your files. Did you get any attachments from me at
11 all?

12 MR. GOSSAGE: Received no attachments
13 for you. And those were checked to see --

14 THE APPELLANT: And I was never
15 informed of that until today. I did send
16 attachments.

17 MR. GOSSAGE: All I know is I
18 received five offers. Four had the attachments and
19 the responses. Even the responses that were
20 submitted are not responsive to the questions. So
21 I don't know how to answer that. We did not
22 receive it.

23 MS. CROOM: What does the -- what
24 does the person who's submitting the information
25 see on their end in the system?

1 MR. GOSSAGE: Well, the last piece --
2 the last page.

3 MS. CROOM: Is that --

4 MR. GOSSAGE: That's their -- the
5 page from it, and it's telling you the deliverables
6 are not present. It doesn't stop you from hitting
7 the button to send it on end, but it does warn you
8 that it's not there.

9 MR. COBB: When you pointed it out,
10 the attachments were not -- the required documents
11 were not attached, did Mr. King then provide you
12 with his attached document he had attempted to
13 attach?

14 MR. GOSSAGE: No. In the initial
15 letter when we're telling him it's not responsive
16 to those evaluation criteria as specified in the
17 solicitation, a response came back about
18 unconstitutionality and remedying in flux. It had
19 nothing to do with attachments not being present.

20 MR. COBB: There's not anything
21 submitted to the board to look at?

22 MR. GOSSAGE: No. We have never seen
23 any.

24 MR. NOLAN: Any other questions?

25 MR. POTTER: I'd just like to have

1 your summary as to why your bid was responsive.
2 And if you could avoid anything beyond that, that
3 would be helpful to me. I just need to know if
4 your bid was responsive.

5 THE APPELLANT: The bid was asking
6 for a short-term rental consultant, and I offered
7 my solution. My solution was that we were going to
8 have the compliance done on the sites themselves,
9 rather than try to figure out if -- you know, which
10 house is this house and which address is this
11 address, just working with the host sites
12 themselves. And doing compliance there on the site
13 itself. Collecting the taxes and determining if
14 this house is in Metro and under these certain
15 rules.

16 MR. POTTER: I understand what you
17 just told me, but I still haven't heard if your bid
18 was responsive or not, because that's what's before
19 this board.

20 THE APPELLANT: Well, I never
21 intended to enter into an information sharing
22 agreement with Metro. I think I told them that,
23 and I responded to that. I sent the information
24 in. I never got a -- from my understanding of
25 procedure -- and I might be wrong here -- is when

1 somebody submits the procedure, you look at if you
2 have some stuff that's missing. You send them back
3 an e-mail through the system, correct, saying you
4 still need this, that and the other? Is that the
5 way it typically works?

6 MS. CROOM: That was my question:
7 How does it work?

8 MR. GOSSAGE: What you see on these
9 sheets of paper in the boxes was the only response
10 we received from Mr. King. And as you look at
11 those -- and the questions for the evaluation
12 criteria are above it -- you will see that the
13 response is -- the responses are not answering any
14 of the questions above. And so we eventually heard
15 more today, although I still am unclear about it,
16 but we heard more today that was responded to in
17 the document.

18 MS. CROOM: I think the question was
19 about the ISA in particular, though, because that
20 is what would have needed to have been attached.
21 And it was not attached and showed us something on
22 the system that shows that it was not attached. I
23 think -- so there is nothing that's sent to whoever
24 the bidder is that indicates that your application
25 has been complete once the bidding closes, we move

1 forward. Is that correct?

2 MR. GOSSAGE: That's correct. Just
3 as in the old days of manual, if you send in a
4 notebook and failed to put in a section of the
5 notebook, it would still be the same way.

6 MR. NOLAN: All right. Thank you,
7 Mr. King, for your presentation. The board members
8 in station state, would entertain any motion on
9 whether to uphold Mr. Gossage's purchasing agent.

10 MR. POTTER: I make a motion to
11 uphold the purchasing officer's position.

12 MR. NOLAN: Is there a second?

13 MR. COBB: I second.

14 MR. NOLAN: All in favor of the
15 motion?

16 MS. CROOM: Aye.

17 MR. POTTER: Aye.

18 MR. COBB: Aye.

19 MR. NOLAN: Thank you. Is there
20 anything further?

21 MS. EKE: No.

22 MR. NOLAN: We're adjourned.

23 (Adjourned)

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COURT REPORTER'S CERTIFICATE

STATE OF TENNESSEE:

I, PATRICIA A. NILSEN, Licensed Reporter for the State of Tennessee, CERTIFY:

1. The foregoing deposition was taken before me at the time and place stated in the foregoing styled cause with the appearances as noted;

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3. I am not in the employ of and am not related to any of the parties or their counsel, and I have no interest in the matter involved.

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