

August 18, 2022

Via Email: cahuntjr@sbcglobal.net

Clarence Hunt
HR Management, Inc.
462 Elwood Avenue, Suite 9
Oakland, CA 94610

Dear Mr. Hunt:

We are in receipt of your letter dated August 10, 2022, emailed on August 11, 2022, to AC Transit's Board of Directors. Be advised that you failed to follow the District's Procurement Protest Policy (Board Policy 468) in two ways. First, to the extent your protest is based on a lack of SBE/DBE goals in the RFP as set forth in pages 2-3 of your letter, this objection needed to be submitted prior to receipt of proposals (April 19, 2022) pursuant to IV.D.1. of the policy. Your complaints regarding the contents and requirements of the RFP, including SBE/DBE goals, are accordingly untimely.

Second, you incorrectly directed your appeal to the Board of Directors. Pursuant to Board Policy 468 (section IV.G.1.), once the Director of Procurement and Materials Management issues a final determination of the protest based on grounds other than the content of the solicitation, the protester may appeal the decision to the General Manager within five business days of receipt of the decision. Director of Procurement & Materials Management, Fred Walls, emailed you his protest determination on August 4, 2022; the appeal should therefore have been directed to the GM, not the Board, and should have been received no later than August 10, 2022. While arguably untimely, your protest – to the extent it is based on grounds other than the contents of the solicitation – has been reviewed by my office.

While you raise many of the same arguments previously considered and rejected, I have considered these arguments and the previous responses from the Director of Procurement and Materials, and address them point by point as follows:

- **Informal Resolution:** Your appeal claims that the District failed to follow the protest policy in that the Director of Procurement and Materials Management did not schedule a meeting with you to “negotiate a resolution of disputes.” Because your formal written protest related to small business participation, the protest policy requires that the protest be sent to the Contracts Compliance Administrator for review, precluding an informal resolution process. (Section IV.F.2.) The District followed this process as explained in its previous responses. Moreover, your indignation at the lack of an informal resolution process is disingenuous given that you never reached out to the procurement team for a debrief or additional information; rather, in emails dated June 24 and July 6, 2022, you advised that HR Management would be submitting a formal protest and “appeals if necessary.” Finally, informal resolution most certainly does not, as you suggest, require the District to circumvent its open, fair, and competitive procurement process and simply award a contract “to HR Management as a Covid pandemic impacted SBE and DBE provider.”
- **Scoring of Proposals:** This was a very competitive procurement; thirteen proposals were submitted, eleven of which were responsive. As previously stated, HR Management's proposal scored 10th out of 11 responsive proposals. You assert that the 70% score cut-off is arbitrary. Importantly, none of the six vendors selected scored lower than 89%. By comparison, HR Management scored 67%. Even if HR Management had received the maximum points for being a locally owned, small business, it would not have received enough points to justify an award. A review of the notes from the evaluators – who scored without knowing the name



of the proposer or its DBE status – demonstrates serious concerns with HR Management’s proposal as follows:

- “provided a limited summary of the company’s qualifications. Proposer A did not provide proof of license(s) to do business in California.”
- “Not all of the Résumés of all technical personnel to be assigned to work within the Scope of Services was provided. Only the owner and the Operations Manager’s brief background was provided. Limited information on what the background of other technical staff.”
- “The proposal did not clearly indicate the number of employees and the responsibilities for each role. It is unclear if the job titles on the org chart are confirmed positions with actual staff or if Proposer A is working to hire more staff.”
- “Proposer A provides some of the required information in the proposal. Attention to detail, spelling errors, limited information on the qualification of other staff were missing from this proposal. This company is not recommended to be amongst the other proposals for consideration.”
- “Proposer A did not provide a detailed description of the technical components to specific sections and methodologies, capacity, and strategy to perform the Scope of Services. Proposer A is missing parts of the required A-E. Proposer A made reference to review forms instead of providing an explanation regarding the attachments.”
- “Only 1 recruiter will not work with AC Transit.”
- “Not enough information on experience”
- “Only 2 people will be assigned to this account”
- “No performance information attached”

Indeed, HR Management’s proposal appeared to have been prepared with minimal effort. An example of this can be found in the grammatical errors on page 4 of the proposal. Finally, HR Management’s assertion that the selected vendors “do not have credible track records with respect to diversity and partnering with African-American small businesses,” is unsupported by any evidence. As previously indicated, four of the selected vendors themselves qualify as SBE/DBE businesses.

- **Alleged Bias in Selection:** The sole basis for HR Management’s assertion of bias appears to be the fact that it was not selected as a vendor for this solicitation. HR Management asserts that it should have been selected based solely on considerations of “systemic racism and Covid 1619 [sic] on African-American DBEs and SBEs...” HR Management has not addressed the constraints of California Proposition 209 and the California Constitution, Section 31(a), which prohibit “preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” Nothing in HR Management’s appeal supports a conclusion that “[r]ace and implicit bias were motivating factors in ACT’s preferential treatment of the ‘Advantaged Vendors’ over HRM and Clarence Hunt.” Rather, the scoring criteria were explicitly listed in the RFP and all proposals were scored according to the same criteria, without any knowledge regarding the race of the proposers.

Accordingly, none of the arguments raised in your August 10, 2022, letter support a reversal of the final determination rendered by the Director of Procurement and Materials. Your appeal is therefore denied.

Pursuant to Board Policy 468, if you are dissatisfied with this decision, you may appeal to the Board of Directors within five (5) business days. The Board shall then determine whether to entertain the appeal; if no motion is made to entertain the appeal, it shall be the equivalent of a denial. A minimum of four (4) affirmative votes is required to consider the appeal. If the Board elects to entertain the appeal, its review is limited to determining whether (1) the District was grossly negligent in failing to follow the District’s procurement policy (BP 465); or (2) the District failed to respond to the protest in a timely manner.



*Alameda-Contra Costa Transit District
Request for Proposals - 2023- 1585 / HR Management Temporary Personnel Services*

Based on my review, I am confident that the District closely followed its procurement policy in conducting a fair, open and competitive procurement for temporary employment services – your appeal has not provided any evidence of a departure from policy, much less gross negligence. The record is further clear that the District has responded to your protests and appeals in a timely manner.

Sincerely,

A handwritten signature in blue ink, appearing to read 'm a hursh', with a long horizontal flourish extending to the right.

Michael A. Hursh, General Manager