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August 24, 2022

AC Transit
Board of Directors
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Joel Young, VP
H.E Christian Peebles
Jovanka Beckles
Jean Welch
Murphy McCalley
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1600 Franklin Street
Oakland, CA 94612
Delivered via email

Re: Appeal to AC Transit Board of Directors

Temporary Personnel Services RFP 2023-1585

Board of Directors,

Pursuant to AC Transit's (ACT) bid protest procedures this is an appeal and request for the Board of Directors to overturn Micheal Hursh's denial of HR Management's bid protest.

Mr. Hursh denied HR Management's protest through numerous misrepresentations including racial animus and implicit bias. The Board of Directors should consider in its deliberations *intentional false statements made by Mr. Hursh:*

1. Mr. Hursh stated that HRM did not follow District protest guidelines. It's important to note that the District did not include the District's procurement bid protest policy or guidelines in the RFP solicitation document. HRM asserts that this omission was intentional with the goal of preventing vendors from filing timely and viable claims or objections. ***This constitutes gross negligence by the District.***
2. On June 19, 2022, ACT notified HRM by email that HRM's proposal was not selected. In the denial letter the District did not include protest procedures required to file protest. ***This is gross negligence by the District.***
3. On June 26, 2022 HRM submitted a timely protest to the District serving Mr. Frederick Walls. Ms. English acknowledged HRM's protest was received timely. ***This is contrary to Mr. Hursh's statement showing implicit bias and racial animus by Mr. Hursh.***

4. On July 19, 2022, Cheryl Sudduth emailed HRM an undated denial letter of HRM's protest. The undated letter was signed by Frederick Walls. Mr. Walls denial was replete with misstatements about HRM's proposal and HRM's intentions. ***Mr. Walls' undated denial letter shows implicit bias and gross negligence and blatant disregard for the District's informal resolution of vendor protest set forth in District procurement policy.***
5. It is important to note that Mr. Walls did not address in his undated denial letter why he intentionally violated District procurement policy by refusing to personally meet with HRM to seek informal resolution. ***Mr. Walls conduct constitutes gross negligence warranting the Board of Directors to grant HRM's appeal.***
6. On July 26, 2022, HRM timely appealed to the General Manager. HRM's appeal was emailed to Michael Hursh at his District email address. Mr. Hursh blatantly lied in stating that HRM initially filed an appeal directly to the Board of Directors. ***Mr. Hursh's intentional misstatements shows racial animus and implicit bias.***
7. On August 4, 2022, Cheryl Sudduth emailed a letter to HRM dated August 3, 2022 signed by Frederick Walls. ***Mr. Walls' August 3, 2022 letter was a response to HRM's appeal to Mr. Hursh on July 26, 2022.*** Rather than Mr. Hursh directly responding to HRM's appeal made directly him, ***Mr. Hursh delegated Mr. Walls to respond for him. Mr. Hrsch's delegation of Mr. Walls to respond to an appeal addressed to him from a small local African-American-owned business shows racial animus and implicit bias and gross procurement negligence in violation of District procurement policy***
8. On August 10, 2022, HRM filed an initial appeal and request for intervention to the Board of Directors.
9. On August 18, 2022, Cheryl Sudduth sent HRM an email from Mr. Hursh. The letter dated August 18, 2022 stated that it was the District's final decision regarding HRM's protest.
10. Mr. Hursh August 18, 2022 letter was replete with misrepresentation and lies about HRM's proposal in the following particulars: a) HRM did submit a business license; b) Resumes of HRM technical support personnel were included in HRM's proposal; c) HRM's organizational chart was not confusing; d) HRM's proposal responded clearly and concisely to all RFP questions. It appears that the evaluators were not experienced in evaluating temporary staffing proposals and were clearly biased in scoring HRM's proposal based totally upon subjective analysis; e) HRM's proposal contained detailed descriptions of all specific sections and methodologies, capacity, including strategy to perform the RFP scope of work; f) One recruiter is sufficient to cover the District's requirements. The RFP was silent on volume of services the District required. If more than one recruiter was needed to meet the District's needs HRM is fully capable of providing more recruiters; g) HRM's proposal showed over 20 years of experience and past performance. Client references were provided that confirmed HRM's experience and past performance; h) HRM's proposal was prepared with significant effort. It's offensive and racist for Mr. Hursh to state that HRM's proposal showed minimal effort. That's purely a racist conclusion by a racist General Manager, Mr. Hursh. The District Board should take steps to fire Mr. Hursh due to his racist conduct toward small local African-American owned businesses; i) Contrary to Mr. Hursh's misstatements, HRM is not advocating for racial preferences in contracting.

HRM is advocating for the Board of Directors to support and mandate the adoption of a policy to include Small Business Goals in all District Professional Services RFPs and other procurement opportunities. HRM is requesting the District Board of Directors to grant HRM's appeal and mandate District staff to re-bid the temporary staffing RFP with Small Business goals including contract compliance mandates. ***HRM is requesting the Board of Directors to mandate staff to rebid the temporary staffing RFP as a Small Business set-aside.***

- 11. The District procurement department issued an extremely poorly written and confusing temporary staffing solicitation document. The RFP contained numerous redundant and conflicting questions.***

It is clear that ***Mr. Walls violated District procurement policy through gross negligence warranting the Board of Directors to grant HRM's appeal.*** It is equally clear that ***Mr. Hursh violated District procurement policy by failing to instruct Mr. Walls to engage in informal resolution with HRM.*** The facts and evidence confirm that Mr. Hursh engaged in racial animus and implicit bias against HRM though his failure to instruct Mr. Walls to comply with District procurement policy of informal resolution and misrepresented the content of HRM's proposal submission. ***Mr. Hursh's conduct constitutes gross negligence and race discrimination.***

HR Management is requesting the ACT Board of Directors at its next regularly scheduled meeting to make a motion to grant HRM's appeal and instruct staff to re-bid the temporary staffing RFP to include mandatory Small Business goals including set-asides. The District has a significant pool of qualified Small Businesses that can successfully meet the District's temporary staffing requirements. The District Board of Directors has a fiduciary duty to assure the District's local Small Business community are able to fairly compete and equitably participate in District contracts without racial animus and implicit bias through gross negligence by District staff.

Proposed Resolution of this Appeal: HR Management request the ACT Board of Directors to instruct Mr. Walls and Mr. Hursh to comply with ACT's bid protest policy. HR Management request the Board of Directors to mandate re-bid of the temporary staffing RFP to include mandatory small business goals and set-asides. HR Management request the ACT Board of Directors to model its procurement policies after the City of Oakland.

Respectfully,

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