

HR Management
Appeal to Board
RFP 2023-1585
August 10, 2022
Page 1

SR 22-513, Att.5.

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August 10, 2022

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1600 Franklin Street
Oakland, CA 94612
Delivered via email

Re: Appeal: Temporary Personnel Services RFP 2023-1585

Board of Directors,

Pursuant to AC Transit's (ACT) bid protest procedures this is an appeal and request reconsideration to overturn Frederick Wall's denial of HR Management's bid protest of "Recommended Vendors" as recipients of ACT's temporary staffing services contracts. The "Recommended Vendors" are collectively referenced herein as "Advantaged Vendors". The General Manager denied our appeal without review.

Mandatory Grounds for Granting Appeal

HR Management filed a timely bid protest and appeal. AC Transit's bid protest policy mandates informal resolution of claims. AC Transit's bid protest policy requires ACT to contact the protesting party to meet and confer to clarify issues and negotiate good faith resolutions of disputes. Frederick Walls, ACT Procurement Director failed to contact HR Management to schedule a meeting to attempt informal resolution of disputes. Mr. Wall's procurement management approach to the District's African-American small business community is harmful.

Additional Grounds for Granting Appeal

Mr. Wall violated ACT's protest procurement policy through his failure to attempt informal resolution. Mr. Walls made several false assumptions in his denial of HRM's protest including but not limited to evaluation panel members are "people of color".

Not sure what Mr. Walls was trying to say by that statement. Mr. Walls failed to realize that “people of color” can discriminate against African-American owned small businesses.

Mr. Walls stated that several of the recommended vendors were minority owned businesses. That statement was made as pretext to justify discriminatory procurement practices directed toward HR Management specifically. What’s the relevance of that statement if according to Mr. Walls ACT used a “blind” scoring system. How can the evaluation panel scoring system engage in “blind” scoring when the RFP allows points for various types of racial or other vendor demographics?

Furthermore, Mr. Walls acknowledged that ACT utilized an arbitrary and subjective scoring system that conveniently eliminated HR Management. HR Management allegedly received a “raw score of 67%, according to Mr. Walls. The threshold vendor “passing” level was subjectively set at 70%. HR Management asserts that ACT’s failure to include HRM as a recommended vendor was arbitrary and subjective. HR Management further contends that the ACT procurement panel acted in bad faith in the review of HR Management’s proposal thus giving HRM lower scores than the “Recommended Vendors” based upon race, gender, and size.

Mr. Walls falsely reasoned that the subject matter procurement should not be considered for a small business set-aside because of an alleged ACT report in January 2022 that falsely stated that there is an insufficient “pool” of SBE’s in Alameda and Contra Costa Counties. Mr. Walls is woefully incorrect regarding the pool of available SBE’s. For example, according to the Alameda County Auditor-Controller 2022 SLEB reports there are over 17,000 certified SLEB’s in Alameda County alone. Furthermore, the City of Oakland has over 2500 certified SBE’s registered with its Contract Compliance departments.

Mr. Walls is doing a grave disservice to ACT and the taxpayers of Alameda and Contra Costa County in stating that there is an insufficient pool of SBE’s. Mr. Walls is using a classic approach when intentional discrimination in procurement is actively part of the procurement culture.

Accordingly, the AC Transit Board of Directors should contact both Alameda County Auditor Controller and City of Oakland Contract Compliance Director for assistance in the correcting ACT’s false and misleading description of the ACT’s SBE vendor pool for purposes of establishing procurement SBE and DBE goals and set-asides.

The Board should direct Mr. Walls and the General Manager to meet with HR Management to discuss in good faith the scope and merit of HR Management’s protest.

Alameda and Contra Costa County African-American owned small businesses have been devastated by the combined impact of Covid 1619 and systemic procurement racism.

ACT Purchasing are ignoring the impact of both racism and the Covid pandemic on African-American same businesses while providing preferential treatment to businesses that are not owned by African-Americans. Accordingly, targeting for exclusion, small businesses owned by local African-Americans. The RFP intentionally did not include SBE or DBE goals.

The exclusion of SBE and DBE goals were designed to assure that African-American locally owned small businesses would be excluded from contract award based upon a vendor selection process that was based totally on subjective criteria.

The intent of ACT's SBE and DBE Program is to build capacity of small, local, and disadvantage businesses. Part of building capacity is to award prime contracts to qualified SBE and DBE firms.

ACT Procurement is restrained from using federal funds on projects including temporary staffing services without required DBE and SBE goals. The subject matter RFP does not include SBE or DBE goals or set-asides for transportation contracts using federal funds. Therefore, ACT must cancel and re-bid the RFP and include SBE and DBE requirements.

Awarding contracts to African-American SBEs and DBEs should be considered as part of ACT's plan to address systemic procurement racism against African-American small businesses.

Rather than ACT developing procurement plans and goals to redress systemic racism in ACT contracts, it's disappointing that ACT Procurement Director has not taken any steps to assist and support African-American DBEs and SBEs in the award of ACT contracts. HR Management is a SBE and DBE with a proven track record that was denied contract recommendations for reasons other than competitiveness.

The "Advantaged Vendors" do not have credible track records with respect to diversity and partnering with African-American small businesses. As a result, ACT must cancel the RFP and re-bid requiring DBE and SBE goals.

1. ACT Board of Directors should mandate that this RFP is parceled with specific DBE and SBE goals and set-asides to allow African-American DBEs and SBEs to become prime vendors through contract awards.

Contract recommendation of the "Advantaged Vendors" violate the intent of federal contract compliance DBE guidelines. ACT has no discretion to violate federal procurement policy with respect to DBE inclusion in federally funded contracts.

ACT should not waive or abandon its goal of maximizing contract opportunities to legitimate DBEs and SBEs. Awarding contracts to privileged "Advantaged Vendors" would abandon the objectives of ACT's SBE program through denying contracts to African-American SBEs.

The ACT Evaluation Panel did not take into consideration the adverse impact of systemic racism and Covid 1619 on African-American DBEs and SBEs in this procurement.

The Evaluation Panel's decisions *were not based upon objective criteria but were guided by subjective biases against African-American owned small businesses.*

Clarence Hunt, the owner and president of HR Management is an African-American.

Race and implicit bias were motivating factors in ACT's preferential treatment of the "Advantaged Vendors" over HRM and Clarence Hunt; thus scoring the "Advantaged Vendors" proposals higher than HRM's proposal.

Proposed Resolution of this Protest: HR Management is requesting the ACT Board of Directors to instruct Mr. Walls and the General Manager to comply with ACT's bid protest policy and evaluate the disproportionate adverse impact of Covid on African-American SBEs in Alameda and Contra Costa Counties. HR Management is requesting support from the Board of Directors in recommending that the RFP for temporary personnel services be parceled in a fair and equitable manner to assure that the District's small local African-American businesses are awarded contracts using objective guidelines and qualifications. We recommend a contract award to HR Management as a Covid pandemic impacted SBE and DBE provider. Contract value not to exceed \$500,000 annually- three year term with option to extend for two years.

Based upon the foregoing, HR Management respectfully request the ACT Board of Directors to review and investigate all claims and overrule Mr. Frederick Walls denial of HR Management's initial protest.

Respectfully,

Clarence Hunt

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