

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 9/14/2022

Staff Report No. 22-513

TO: AC Transit Board of Directors
FROM: Michael A. Hursh, General Manager
SUBJECT: Appeal from HR Management Regarding RFP 2023-1585

ACTION ITEM

AGENDA PLANNING REQUEST: ☐

RECOMMENDED ACTION(S):

Consider whether to entertain HR Management's (HRM) appeal of the General Manager's decision to deny HRM's protest of its non-award decision under RFP 2023-1585 and to take any other actions as may be deemed necessary.

1. The passage of a motion to deny the appeal or the failure of a motion to consider the appeal means that the General Manager's decision will become final. If no motion is made on this matter, it shall have the same effect as a denying the appeal and the General Manager's decision will become final.
2. The passage of a motion to grant the appeal means the Board will schedule a hearing date to consider the appeal for a future Board meeting and notify HRM of the hearing date.

STRATEGIC IMPORTANCE:

Goal - Strong Public and Policymaker Support
Initiative - Employee Recruitment, Training and Retention

The timely and thorough review of this protest confirms the District's commitment to public procurement standards and Federal regulations.

BUDGETARY/FISCAL IMPACT:

A decision regarding whether to entertain HRM's appeal has no budgetary impact. If, however, the Board decides to entertain the appeal and ultimately directs staff to resolicit these services, there could be a significant cost in terms of staff time, potential cost increases, and appeals from other bidders.

BACKGROUND/RATIONALE:

The District utilizes Temporary Personnel Placement Services to address short term staffing needs which include backfilling for a vacant position or when an incumbent is unavailable, filling a position for a project of short duration, addressing urgent operational needs, specialized knowledge, skills, or abilities.

The Board approved the release of a solicitation for temporary personnel placement services on January 26,

2022 (Staff Report 22-040). Request For Proposal (RFP) No. 2023-1585 was developed on the basis of this Staff Report and further input from (Procurement, Contracts Compliance, Finance and Legal) staff, setting forth the following evaluation criteria and proportional importance:

- Criteria 1 - Offeror's Information & Understanding of Project Objectives (20%)
- Criteria 2 - Organizational Information and Qualifications (30%)
- Criteria 3 - Capabilities & Experience (10%)
- Criteria 4 - Size & Location of Firm; Additional Factors (5%)
- Criteria 5 - Cost/Fees (35%)

The RFP was issued on March 21, 2022. Thirteen proposals were received on April 15, 2022. The proposals were reviewed, evaluated, and scored by a panel that included the District's Sr. Human Resources Administrator for Staffing, Print Shop Supervisor, and a Senior Administrative Assistant from Maintenance. Procurement staff oversaw the process. The scoring panel was not provided the identity of the vendor when reviewing each RFP proposal.

The application of the scoring criteria listed above resulted in selection of six (6) firms.

Ranking Results:

1. Epic (Disadvantaged Business Enterprise [DBE])
2. Apple One Employment Services (DBE)
3. PsiNapse Technology Ltd.
4. CCS Global Tech
5. Cogent
6. Tryfacta (DBE)

HRM submitted a timely protest on July 5, 2022, objecting to the notice of intent to award the contract based on the RFP's lack of a set-aside for small and minority businesses, and alleged biases of the evaluation panel. On July 19th, after careful consideration and review, the Director of Procurement and Materials denied the protest with input from the Compliance and Legal Departments. This decision was appealed by HRM on July 26th, with a request for an "informal meeting" to potentially award HRM a contract outside of the public procurement process. The Director of Procurement and Materials reviewed the first level appeal and issued a denial on August 3, 2022. HRM incorrectly submitted a second appeal to the Board of Directors dated August 10th. Per Board Policy 468, the second appeal must be directed to the General Manager for consideration. Accordingly, the General Manager reviewed the second appeal, including the solicitation, the initial protest and denial, the first appeal and denial, as well as other information. The General Manager issued his opinion denying the second appeal on August 18, 2022.

In its appeal to the Board, HRM makes numerous allegations of gross negligence and race discrimination based on (1) the lack of an informal resolution of its protest; and (2) the lack of a set-aside for small businesses in the RFP. Pursuant to Board Policy 468, section IV.D.1., a protest based on the content of the RFP - such as the lack of DBE or SBE goals - must be submitted prior to the receipt of proposals, which was April 19, 2022. HRM further takes issue with the scoring panel's evaluation of its proposal.

Board Policy 468 (section IV.G.2.) provides that when an appeal is taken from the General Manager's final

decision, the Board shall first determine whether to entertain the appeal. If no motion is made to entertain the appeal, it shall be the equivalent of a denial, and a minimum of four (4) affirmative votes is required to consider the appeal. If the Board elects to entertain the appeal, it must notify the protester of the date and time of the hearing, and has the discretion to specify the following:

- a. Length of documents to be submitted;
- b. Due dates of any documents to be submitted;
- c. The length of oral presentations for each side (District and protester); and
- d. Any additional parameters the Board feels are necessary.

Further, the Board's 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. HRM does not allege that any of the District's responses to its protest and appeals were untimely.

Attached are HRM's protest and first two appeals, as well as the three decisions from the Director of Procurement and Materials and the General Manager, which address all of the arguments made by HRM throughout the protest and appeals process.

ADVANTAGES/DISADVANTAGES:

No advantages or disadvantages were identified with this decision. If the Board votes to entertain the appeal and eventually to resolicit these services, this would result in increased staff time and potential increases in proposals from the market.

ALTERNATIVES ANALYSIS:

The only two alternatives for this item are to consider the appeal or not.

PRIOR RELEVANT BOARD ACTION/POLICIES:

Staff Report 22-258

Staff Report 22-040

ATTACHMENTS:

- 1. Protest by HRM July 5, 2022
- 2. Appeal submitted by HRM July 26, 2022
- 3. District staff response July 19, 2022
- 4. District staff response August 3, 2022
- 5. HRM Appeal to General Manager August 10, 2022
- 6. General Manager response to appeal August 18, 2022
- 7. HRM Appeal to Board of Directors August 24, 2022
- 8. Board Policy 468 - Procurement Protest Procedures

Prepared by:

Fred Walls, Director of Procurement and Materials Management

In Collaboration with:

Jill Sprague, General Counsel

Approved/Reviewed by:

Chris Andrichak, Chief Financial Officer

Michael A. Hursh, General Manager

Lynette Little, Director of Civil Rights & Compliance