



State of Arkansas
Bureau of
Legislative Research

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MEMORANDUM

TO: ALC—Executive Subcommittee Members
FROM: Jillian Thayer, Legal Counsel to the Director
DATE: September 18, 2017
SUBJECT: Calyptus Consulting Group, Inc. – Protest of Non-Responsive Determination under RFP No. BLR-170003, Procurement Process Consulting Services

Review Subcommittee – Vendor Selection Process

On July 21, 2017, RFP No. BLR-170003 was released for the purpose of receiving proposals from companies regarding provision of consulting services to the Review Subcommittee of the Legislative Council as it fulfills its responsibility under the Rules of the Legislative Council to conduct a study of the procurement laws and processes in the State of Arkansas. ([Attachment A](#))

In response to the RFP, the Review Subcommittee received eight (8) proposals submitted by the deadline of 4:30 p.m. on August 18, 2017, including a proposal from Calyptus Consulting Group, Inc. Upon a review of the documents submitted, it was determined that Calyptus, along with four (4) other responding Vendors had failed to sign the Official Price Proposal Sheet.

At its meeting on September 6, 2017, the members of the Review Subcommittee were presented with the attached RFP Response Checklist ([Attachment B](#)) as well as a copy of the RFP, a Price Comparison Table, and all eight (8) proposals. A determination was made by the Subcommittee that failure to sign the pricing information, as required by the RFP, constituted a non-responsive bid. A motion was made to eliminate from consideration the five (5) Vendors with unsigned Official Price Proposal Sheets. The motion was seconded, in accordance with ALC Rules, and passed by voice vote.

Upon adjournment of the September 6 meeting of the Review Subcommittee all of the five (5) non-responsive Vendors were notified that “Due to a failure to sign the Official Price Proposal Sheet, [their] proposal was determined by the Subcommittee to be a non-responsive bid and, therefore, was not selected to provide an oral presentation”. It was upon receipt of this notification, that Dr. George Harris, President of Calyptus, began his inquiry of the reason for disqualification, which led to the protest under consideration today. See Calyptus Protest Letter, [Attachment C](#).

RFP No. BLR-170003, Procurement Process Consulting Services

The RFP states at Section 1.3, “For a proposal to be considered, an official authorized to bind the Vendor to a resultant contract must have signed the proposal and the OPPS.” Section 1.3 goes on to state that the “Subcommittee reserves the right to award a contract or reject a proposal for any or all line items of a proposal received as a result of this RFP”. Proposals will be “rejected for one or more reasons not limited to the following: [. . .] Failure to sign an Official RFP Document.”

The requirement to sign the Official Price Proposal Sheet was also on the OPPS itself, which reads in pertinent part, “The Official Price Proposal Sheet must be submitted in the following form, allowing for the inclusion of specific information regarding positions, goods, services, etc., **and signed by an official authorized to bind the Vendor to a resultant contract.**” (emphasis added).

This requirement was also included on the Requirements Checklist, which consisted of required items, pulled directly from the RFP and compiled into a checklist. The Checklist was posted with the RFP on the Office of State Procurement website. (Attachment D)

Calyptus stated in its proposal, at p. 8, Section 1.3, “Calyptus has read all caution notes and agrees to all aspects of the statement. The company president, Dr. George Harris has signed the proposal form and the Official Proposal Price Sheet.” (Attachment E) There was no signature on the OPPS submitted by Calyptus. (Attachment F)

Arkansas Procurement Law

Arkansas Code §19-11-207 states that the Arkansas Procurement Law applies to expenditures of “public funds by this state, acting through a state agency”. “State agency” is defined by the procurement law at Arkansas Code § 19-11-203(30) as “any agency, institution, authority, department, board, commission, bureau, council, or other agency of the state supported by appropriation of state or federal funds, except an exempt agency pursuant to subdivision (13) of this section.”

Included in the definition of “exempt agencies” under Arkansas Code § 19-11-203(13) are “the constitutional departments of the state, the elected constitutional offices of the state, **the General Assembly, including the Legislative Council and the Legislative Joint Auditing Committee and supporting agencies and bureaus thereof**”. (emphasis added)