

**REPORT
OF THE
EXECUTIVE SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

October 20, 2017

Senator Bill Sample, Co-Chair
Senator Terry Rice, Vice Chair
Senator Jonathan Dismang
Senator Jim Hendren

Representative David Branscum, Co-Chair
Representative Jim Dotson, Vice Chair
Representative Jeremy Gillam
Representative George B. McGill

September 18, 2017

We, the Executive Subcommittee of the Arkansas Legislative Council, met on September 18, 2017 at 11:30 a.m. in Room 205 of the State Capitol Building, Little Rock, Arkansas. Co-Chair Bill Sample called the meeting to order and saw a quorum of members present. The members present are listed on the sign-in sheet.

The subcommittee heard, via telephone conference call, from Dr. George Harris, President of Calyptus Consulting Group, Inc., (Calyptus) concerning his protest of the Review Subcommittee decision that the proposal submitted by Calyptus Consulting Group was non-responsive. Dr. Harris explained his reasons for his request that the subcommittee reconsider the determination that the Calyptus proposal was unresponsive and that Calyptus be allowed to resubmit the proposal. There followed several questions and a discussion of the request from Calyptus.

Co-Chair David L. Branscum moved that the Executive Subcommittee recommend that the Legislative Council stand by the original decision of the Review Subcommittee. The motion was seconded and passed by voice vote (see Attachment A).

The subcommittee also heard from James F. Goodhart, General Counsel for the Arkansas Game and Fish Commission, regarding the Commission's response to the Legislative Council's request that proposed rules of the Game and Fish Commission be submitted to the Administrative Rules and Regulations Subcommittee when the public comment period begins instead of when the rule is finalized. Mr. Goodhart explained that the position of the Game and Fish Commission is that the formal review of proposed rules would violate Amendment 35 to the Arkansas Constitution and asked that amendment to the Legislative Council Rules not be adopted. There followed several questions and discussion of the request by the Legislative Council.

Senator Terry Rice moved that the Executive Subcommittee recommend adoption of the proposed amendment to Legislative Council Rule 5.(a)(9) and Rule 22.(a)(2), which would revise the definition of "state agency" to include the Arkansas Game and Fish Commission. The motion was seconded and passed by voice vote.

The meeting was adjourned at 12:42 p.m. as there was no further business to come before the committee.

September 28, 2017

We, the Executive Subcommittee of the Arkansas Legislative Council, met on September 28, 2017 at 9:00 a.m. in Room 205 of the State Capitol Building, Little Rock, Arkansas. Co-Chair David L. Branscum called the meeting to order and saw a quorum of members present. The members present are listed on the sign-in sheet.

Co-Chair Branscum stated the only item on the agenda was the reconsideration of the vote that was passed during the September 18, 2017 meeting to adopt the proposed amendment to Legislative Council Rule 5.(a)(9) and Rule 22.(a)(2), and the letter from the Game and Fish Commission Director, stating that proposed rules would be made available to the Bureau staff when public comment is initiated on the rules. Co-Chair Branscum asked if there were any questions or discussion, and seeing none, asked if there was a motion.

Senator Terry Rice moved to expunge the vote whereby the proposed amendment to Legislative Council Rule 5.(a)(9) and Rule 22.(a)(2) was adopted. The motion was seconded and passed by voice vote.

There being no further business before the subcommittee, the meeting was adjourned.

Respectfully submitted,

Senator Bill Sample and Representative David L. Branscum, Executive Subcommittee Co-Chairs

BS/DLB/MG:vjf

ARKANSAS LEGISLATIVE COUNCIL

Officers

Senator Bill Sample
Senate Co-Chair

Representative David L. Branscum
House Co-Chair

Senator Terry Rice
Senate Co-Vice Chair

Representative Jim Dotson
House Co-Vice Chair



Room 315, State Capitol Building
Little Rock, AR 72201

Marty Garrity
Executive Secretary

Tel: 501-682-1937
Fax: 501-682-1936

September 18, 2017

Dr. George Harris
Calyptus Consulting Group, Inc.
43 Thorndike Street
Cambridge, MA 02141

Re: Protest of Non-Responsive Determination – RFP No. BLR-170003

Dr. Harris,

On September 18, 2017, the Executive Subcommittee of the Legislative Council met to consider your protest of the decision by the Review Subcommittee to eliminate Calyptus Consulting Group from consideration under RFP No. BLR-170003 due to its failure to sign the Official Price Proposal Sheet.

Upon hearing testimony from you and discussion among the Executive Subcommittee members, the determination was made to uphold the decision of the Review Subcommittee.

The RFP and the Official Price Proposal Sheet ("OPPS") both required that the OPPS be signed by an individual authorized to bind the entity to any resulting contract. The OPPS submitted by Calyptus was not signed. As such, a determination was made by the Review Subcommittee that this was a non-responsive bid. That decision was upheld by a vote of the Executive Subcommittee.

In accordance with Section 1.14 of the RFP, the Co-Chairs of the Legislative Council hereby find that the award of the Procurement Process Consulting Services Contract to Ikaso Consulting, LLC, as selected by the Review Subcommittee, without delay is necessary to protect substantial interests of the state. As such, the award and signing of the contract may proceed.

Dr. George Harris

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September 18, 2017

Sincerely,



Senator Bill Sample
Senate Co-Chair
Arkansas Legislative Council



Representative David L. Branscum
House Co-Chair
Arkansas Legislative Council

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cc: Senator Scott Flipppo, Senate Co-Chair, Review Subcommittee
Representative Jon Eubanks, House Co-Chair, Review Subcommittee
Senator Linda Chesterfield, Senate Co-Chair, Policy-Making Subcommittee
Representative George B. McGill, House Co-Chair, Policy-Making Subcommittee
Ms. Marty Garrity, Director, Bureau of Legislative Research



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September 11, 2017

ATTN: Marty Garrity
Director
Bureau of Legislative Research
500 Woodlane Street
State Capital Building
Room 315
Little Rock, Arkansas 72201

RE: Protest of Non-Responsive Determination– RFP #BLR 170003

Dear Mr. Garrity:

Per Section 1.14 of the above-referenced RFP, captioned “Appeals”, Calyptus Consulting Group, Inc. (“Calyptus”) formally protests the decision to consider our submitted proposal to be non-responsive, which currently precludes our ability to provide an oral presentation and be considered for award. This protest is founded on a thorough review of the RFP documents, the Federal Acquisition Regulation (FAR), and Arkansas Procurement Code as they relate to our submission. Arguments related to each are provided in turn.

Given the various sources of inconsistencies in the RFP documents as well as State and Federal procurement standard practices, **Calyptus requests that you review the decision to consider our proposal non-responsive and allow our proposal to be formally reviewed for this project, or in the alternative, that we be allowed to re-submit the proposal after an opportunity to cure any clerical or technical deficiencies identified.**

On information and belief, Calyptus submitted the lowest bid of those received in response to this RFP, thus we believe we presented the best value bid. Calyptus is uniquely familiar with the State of Arkansas procurement challenges and has several decades of procurement expertise that make us well suited to providing the dedicated support the Review Subcommittee of the Arkansas Legislative Council will require for this project. By declaring our proposal non-responsive, the BLR and the State are not able to review our significant and unique capabilities while saving money for the taxpayers of the State of Arkansas. We are aware that at least one other bidder was also deemed non-responsive for the same reasons, further pointing out confusion and ambiguities in the RFP documents and requirements. Our protest is based upon the contents of our cover letter, Calyptus’ bid meeting all RFP requirements, ambiguities in the RFP, Arkansas Law, Federal acquisition standards, and common procurement practices.



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1. **Cover Letter Served the purpose of a signed OPPS**

The RFP was confusing as was evidenced by two rounds of clarification.¹ We ultimately were able to submit all components of our proposal, including the OPPS. A cover letter was submitted as a commitment to the proposal content and was signed by an authorized agent of the firm to the proposal, including a commitment to the content of the OPPS. This cover letter has been extracted from the RFP and attached as prima facie evidence of signatory commitment to the documents referenced in the letter (**Attachment 1**).

We assert that this letter substitutes for the signature on the OPPS, as the requirements for signature were inconsistently noted.

Cover letters were also provided with each shipment box and the sealed OPPS envelope noting the shipment contents and commitment to all documents contained therein.

2. **Calyptus met all the requirements of the RFP**

Calyptus met all criteria that could be rationale for rejecting our proposal as per Section 1.3 of the RFP:

1. Failure of the Vendor to submit his or her proposal(s) on or before the deadline established by the issuing office; **Delivered via FedEx 08/17/17 at 8:36AM**
2. Failure of the Vendor to respond to a requirement for oral/written clarification, presentation, or demonstration; **Responded to each numbered paragraph of the RFP**
3. Failure to supply Vendor references; **4 references provided (proposal page 83)**
4. Failure to sign an Official RFP Document; **Signed RFP Cover Page (1-2) incorporated, and all forms required by the RFP with area for signature were signed accordingly.**
5. Failure to complete the Official Proposal Price Sheet(s) and include them sealed separately from the rest of the proposal; **OPPS completed and submitted in a separately sealed envelope; cover letter commits the firm to the contents of the proposal packages submitted**
6. Any wording by the Vendor in their response to the RFP, or in subsequent correspondence, which conflicts with or takes exception to a requirement in the RFP; or **We have taken no exception to any requirements**
7. Failure of any proposed services to meet or exceed the specifications. **We believe our service exceed the specifications and meet all needs of the Bureau of Legislative Research**

¹ See email RE: Questions – RFP #BLR-170003 08/02/17 and 08/09/17



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3. The RFP was inconsistent, confusing, and ambiguous on the need for an additional OPPS signature and the ability to amend the RFP documents

In addition to submission requirement inconsistencies, the RFP contains discrepancies regarding the OPPS. Although bullet point four of Section 1.3 notes that both proposal and OPPS should be signed, this is not considered grounds for proposal rejection below. Furthermore, Section 1.8 Sealed Prices/Cost makes no mention of the signature requirement. Lastly, Section 1.5 Alteration of Original RFP Documents precludes the ability to alter the OPPS to allow for signature. Specifically, Section 1.5 reads:

"The original written or electronic language of the RFP shall not be changed or altered except by approved written addendum issued by the Bureau of Legislative Research. This does not eliminate a Vendor from taking exception(s) to these documents, but it does clarify that the Vendor cannot change the original document's written or electronic language. If the Vendor wishes to make exception(s) to any of the original language, it must be submitted by the Vendor in separate written or electronic language in a manner that clearly explains the exception(s). If Vendor's submittal is discovered to contain alterations/changes to the original written or electronic documents, the Vendor's response may be declared non-responsive, and the response shall not be considered".

We assert that this precluded us for signing the OPPS where there is no signature block or area noted.

4. The Arkansas Procurement Code of 1987 does not address to submit all forms

The Arkansas Code of 1987, Annotated Title 19 does not cover the need to complete all forms without areas for signature.

5. Federal Acquisition Regulation Allows for a Cover Letter committing to all terms of the RFP as an alternate method of indicating a commitment to the bid submitted

According to a significant body of knowledge and common practices, we are able to submit alternate bid forms or letter to submit the bid as long as we accept all the terms of the invitation (which we did) and we did not request any deviations or exemptions of the RFP.

See Section 14.301 (c) (2) of the FAR below:

14.301 -- Responsiveness of Bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system.

(b) Facsimile bids shall not be considered unless permitted by the solicitation (see 14.202-7).



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(c) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if -

(1) The bidder accepts all the terms and conditions of the invitation; and

(2) Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.

(d) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

The FAR has a significant body of knowledge and case law (BCA/ASBCA) pertaining to this topic.

6. Industry practice for signing forms

For contracts and RFPs, the normal and industry-wide standard is to have a signature block. All of the other documents that required a signature in the RFP had a signature block on the appropriate page. This is also included in the body of knowledge for both public and private sector procurement.

Action Requested

Considering the multiple RFP irregularities, ambiguities and inconsistencies in rendering our proposal non-responsive, on the relevant Federal and State laws and regulations, including the State of Arkansas, as well as the fact that the Calyptus bid presented the best value, the Subcommittee should pause the oral presentation segment of the RFP process, and allow for a careful review of our submission.

As our initial review of the procurement code illustrated (page 12 of our proposal), the Subcommittee has a substantial and highly important task in the coming months. We believe that our company and staff expertise are unmatched to this effort and know that we presented the best value overall. Please grant this request for consideration of our submission.

Sincerely,

Dr. George L. Harris
President
Calyptus Consulting Group, Inc.