

JAG 11-10

In addition to the response given below, Eugene Shy, Assistant County Attorney, also asked whether a vice president of the Public Health Trust would be in breach of the Cone of Silence for meeting with a PHT consultant to discuss strategy prior to a recommendation from the Selection Committee – the vice president sits on the Selection Committee. Since the consultant in the instant case is a management consultant and should be viewed as an extension of staff, there is no Cone violation if the VP and consultant were to meet prior to final action taken by the Selection Committee.

Robert Meyers,
January 24, 2011

From: Meyers, Robert (COE)
Sent: Friday, January 21, 2011 4:35 PM
To: 'augusto.maxwell@akerman.com'
Subject: RE: PHT RFP Communication

Dear Mr. Maxwell:

In the instant case, your law firm sent correspondence to members of the Public Health Trust and copied Ms. Cobb, the designated clerk of the Public Health Trust, while the Cone of Silence was in effect. This is to confirm that your firm did not violate the Cone of Silence, as the Cone exempts all written communications provided copies of the communications are forwarded to the Clerk.

If you need additional information, please contact me at your convenience.

Sincerely,

Robert Meyers, Executive Director
Miami-Dade Commission on Ethics and Public Trust

From: agosto.maxwell@akerman.com [mailto:augusto.maxwell@akerman.com]
Sent: Friday, January 21, 2011 4:10 PM
To: Meyers, Robert (COE)
Cc: jose.villalobos@akerman.com
Subject: PHT RFP Communication
Importance: High

Dear Mr. Myers,

As discussed please attached the correspondence that we sent the members of the Public Health Trust with copies to Ms. Cobb who was specifically designated as the clerk for this procurement. We have been contacted by PHT staff alleging that this communication violates the "cone of silence" regulations.

Accordingly I respectfully request your confirmation that the attached communication is in fact consistent with the applicable cone of silence regulations.

Many thanks.

Augusto E. Maxwell
Of Counsel
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One SE Third Avenue



Jose Villalobos
Augusto E. Maxwell

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January 20, 2011

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augusto.maxwell@akerman.com

Jorge L. Arrizurieta, Member
Public Health Trust
c/o Arrizurieta and Associates
1200 Anastasia Avenue, Suite 500
Coral Gables, Florida 33134

Re: Correctional Healthcare Services, RFP No.: 09-5254-A ("the RFP")

Dear Mr. Arrizurieta:

It is our understanding that a Negotiation Committee is being formed with respect to the above-referenced RFP and that the Committee will commence negotiations with the selected vendor(s) during the week of January 31, 2011.

The purpose of this letter is to make the Trust aware of certain misinterpretations, misunderstandings, and miscommunications that have had a material impact on the scoring of the two proposals and to request that the Trust engage in simultaneous negotiations with both vendors. Both the Trust Procurement Regulations and the RFP expressly anticipate simultaneous negotiations. Such negotiations will help to ensure that the Trust receives the best overall solution, as well as alleviate the likelihood of a protest from either bidder.

The issues discussed throughout this letter raise the question as to how thorough, consistent, and fair this RFP and evaluation process have been. It also raises the question – "Isn't there an advantage to the Trust's conducting simultaneous negotiations with both vendors?" Clearly our community will be best served by the Trust's engaging the best provider at the best price and on the best terms. Negotiating with both vendors will help to ensure this happens.

When an RFP was issued 14-months ago to reduce the high cost of healthcare for the inmates of Miami Dade County, two providers responded. Armor Correctional Health Services, Inc. (Armor), a minority-owned, Miami-based company and Prison Health Services, Inc. (PHS), a Delaware company with its corporate offices in Tennessee.

As the attached documents illustrate, in multiple instances it was necessary for Armor to provide additional clarification when the Selection Committee was unclear or was provided inaccurate information. After all of this time, three major issues still are unclear to us:

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- It was stated at the outset of the process that if a local bidder came in with the lowest price, they would be the selected vendor. Since Armor's initial bid was \$90 million less than PHS's initial bid, why didn't the Trust choose to negotiate with Armor at that point?
- Why did Armor receive 41% less in points than PHS from the Selection Committee when the prices differed by only 7% and Armor guaranteed their price for five years while PHS would only honor their price for one year?
- Why wasn't the negative impact of PHS's Small Business Enterprise (SBE) proposal utilizing outsourced temporary agency staffing as it relates to the Collective Bargaining Agreements and quality of care considered as part of the evaluation process?

Background

Since its original release on November 5, 2009, the RFP has been amended 12 times with six additional requests for information. As of the "Pre-Amendment Vendor Conference" on January 11, 2010, it has been clear that Armor and PHS were the only two companies seriously interested in bidding on this project.

The RFP was due on July 29, 2010 and the bids were made public on August 9, 2010 at a meeting of the Selection Committee. Both Armor and PHS representatives were in attendance and both companies were provided copies of the other bidder's proposal. Armor's five year price was lower by \$90 million.

On September 3, 2010, both companies made oral presentations to the Selection Committee. This was also a public meeting at which representatives from each company were in attendance during the other's presentation. During PHS's presentation, they asked the Trust to issue a request for both companies to submit a Best and Final Offer (BAFO).

On October 1, 2010, a BAFO request was issued to which both companies responded on or before the October 22 deadline. The Selection Committee held public meetings on November 3 and November 30 at which the contents of the BAFO were presented and scoring sheets were distributed to the Selection Committee. The original deadline for the scoring sheets to be submitted was December 9, 2010, but was later extended to December 16.

Concerns

Because of the complexity of this RFP, the volume of the proposals themselves, and the limited time the Selection Committee has had to digest all of the information presented to them, it appears that a number of material issues have not been appropriately considered in the evaluation of these proposals. The current evaluations by the Selection Committee rank Armor higher in 10 of the 11 qualitative categories. PHS is ranked higher by the Selection Committee only in pricing. We submit that the basic structure of this evaluation system is flawed and directly contrary to the Trust's best interests, for the following reasons:

1. **No Deduction for PHS's Pricing Exception.** In its BAFO, PHS took a major exception to the pricing requirements. The BAFO stated, and a subsequent amendment clarified, that a five-year, fixed-price contract, cancelable only by the Trust, was an essential component of this RFP. PHS's BAFO includes "a *termination for convenience provision for itself with a 365 day notice*," which would allow PHS to terminate the contract for any reason upon 365 days' notice. Such a notice effectively makes PHS's pricing good for one-year only while Armor agreed to be bound by the full-five year term of the contract with no termination for convenience clause.

The fact that four of the five members of the Selection Committee gave PHS the full 250 points for pricing, without deducting any points for this exception, clearly indicates that the Committee did not understand the difference between Armor's five-year price commitment and PHS's one-year price commitment. How can a vendor be awarded full points on pricing if they took such a significant exception to a mandated requirement?

2. **Small Business Enterprise (SBE) Participation.** The RFP did not specify how SBEs should be used, however it is reasonable to assume that the use of any SBE should support the quality of service offered. PHS's commitment to SBEs is based almost entirely on using outside temporary staffing agencies. In fact, if they were to meet the SBE goal that they have proposed (and for which they are receiving the maximum allowable 100 points) they would have to utilize approximately 25-30% of all personnel staff from these temporary agencies.

Such a high level of temporary staffing is considered grossly unacceptable in the correctional healthcare industry and would undoubtedly have a tremendous and negative impact on the quality of care provided and certainly would have a negative impact on the Collective Bargaining Agreement between JHS and the SEIU. These factors do not appear to have been considered by the Selection Committee's evaluation as there is no documentation included on the Score Sheet noting this extremely material component of PHS's bid.

3. **Scoring Method on Pricing.** The method for evaluating pricing was inconsistent and based on incomplete or misunderstood information. The scoring of vendor BAFO pricing was not based on any specific criteria or guidance and lacked any uniformity and consistency.

First, the scoring by Selection Committee Members on pricing does not reflect and does not reasonably correlate to the actual difference in BAFO prices submitted by the two companies. The difference in the two vendors' prices is approximately 7% but the difference in points awarded was 41%. In fact, one Evaluator awarded Armor zero points and gave PHS the maximum 250 points.

Second, it is clear that members of the Selection Committee based their scoring on different price models within the BAFO price submission. For instance, one member of the Selection Committee based their scoring on Model A, while another gave points on two models and the other three did not even specify which model they were evaluating. Further, as the letter dated December 2, 2010 in Tab #4 indicates, the Committee was

presented with inaccurate information at its November 30 meeting concerning not only price comparisons and staffing models (see below), but also the interpretation of how the different pricing models worked. For example, of the three pricing models requested, Model B is the most typical in the correctional healthcare industry and was recommended by both vendors. When the two bidders' prices for Model B are thoroughly analyzed, the actual price difference amounts to only \$300,000 per year or 0.4%. This was not made clear to the Selection Committee.

In addition, the following issues raise questions about the thoroughness and fairness of the process:

1. **Inaccurate Staffing Information Presented to the Selection Committee.** A handout that was distributed to the Committee at its November 30 meeting confused a number of key issues and presented Armor's proposal inaccurately and inappropriately. We sent the letter referenced above on December 2 (Tab 4) in an effort to clarify these issues.
2. **Request for Best and Final Offer.** While the RFP clearly allowed for the issuance of a BAFO, traditionally, BAFOs are requested prior to the public release of pricing. Since Armor's prices were substantially lower than PHS's, the fact that PHS knew Armor's prices prior to submitting their BAFO gave PHS an inappropriate advantage in preparing their BAFO.
3. **Material Information Not Considered.** PHS failed to disclose material information with regard to its termination of a contract with the Florida Department of Corrections as well as its litigation history and its loss of multiple contracts over the past several years. Such information does not appear to have been presented to the Selection Committee or considered in its evaluations.


Armor has employed its best efforts to address these issues through appropriate channels, as documented by the attached letters. We are only bringing these matters to your attention because we are concerned that these issues have not necessarily been fully addressed.

One of the primary rationales for the request for a BAFO was so the Trust would be able to compare the vendors on a true "apples to apples" basis. As witnessed by the substantial amount of documentation included, a thorough comparison was not obtained. Obviously, rankings that are based on materially misleading or misunderstood information do not serve the Trust's or our community's long-term best interests.

Accordingly, we respectfully request simultaneous negotiations with Armor and PHS. Such action will help to ensure the Trust the most favorable contract possible and would be in the best interest of the taxpayers of Miami-Dade County.

Sincerely,

AKERMAN SENTERFITT



Jose Villalobos, Esq.
Augusto Maxwell, Esq.

AEM/dp

cc: Ivenette Cobb, Executive Office, PHT
Eugene Shy, Esq. County Attorney's Office, PHT
William S. Galvano, Esquire