

July 24, 2020

THIS NOTICE WAS SENT VIA EMAIL

Kiersten Murphy
Henze Cook Murphy PLLC
722 E. Osborn Rd, Suite 120
Phoenix, AZ 85014
KIERSTEN@HENZECOOKMURPHY.COM

Re: **Procurement Officer's Decision** to Protest
RFP YH20-0001 Health e Arizona Plus Maintenance and Operations Services

Dear Ms. Murphy:

AHCCCS is in receipt of the procurement protest dated July 6, 2020, filed by Henze Cook Murphy PLLC on behalf of The Center to Promote Healthcare Access dba Alluma (Alluma) in connection with the Health- e- Arizona Plus (HEAplus) Maintenance and Operations Services RFP YH20-0001. Alluma protests the State's June 26 contract award and the Chief Procurement Officer's (CPO) determination that Alluma's protest was not susceptible for award, contending that Alluma was improperly excluded from evaluation and that Alluma's offer presents the proposal most advantageous to the State. Pursuant to Arizona Administrative Code ("A.A.C.") R9-22-604(G), this letter serves as the Decision of the Procurement Officer in response to the protest.

As bases for its protest, Alluma alleges four general deficiencies where each deficiency is comprised of multiple subparts:

1. Lack of Transparency in the Procurement File.
2. The RFP Appears to Rely on the Incorrect Procurement Authority.
3. The Procurement Determination that Alluma Was "Not Susceptible for Award" Violates Applicable Law.
4. The CPO Incorrectly Found That Alluma's Offer Was Not Susceptible for Award.

Alluma's protest requests relief in the form of (1) stay contract implementation pending resolution of this protest; (2) sustain Alluma's protest; and (3) either issue the contract award to Alluma or reissue the solicitation consistent with Arizona law.

As the Chief Procurement Officer (CPO) of AHCCCS, I have denied Alluma's protest for the reasons set forth below. Alluma's challenges to the HEAplus procurement fail to support the relief requested. In addition, to the extent that Alluma alleges improprieties in an RFP or an amendment to an RFP, Alluma failed to timely file a protest as required by A.A.C. R9-22-604(D)(1) or (2).

Background of the solicitation:

The Arizona Health Care Cost Containment System (AHCCCS) issued RFP YH20-0001 to solicit proposals from Offerors experienced in maintaining, operating, and enhancing highly-integrated (multiple eligibility programs) Affordable Care Act (ACA)/Medicaid Eligibility and Enrollment ("E&E") systems. The awarded Contractor was required to meet minimum qualifications including a minimum number of years of recent and relevant experience.

Paragraph 5 of the RFP, "Purpose of the RFP," states that the awarded "Contractor will be responsible for maintenance and operations of the HEAplus E&E system with some development as needed if new initiatives arise from a State or Federal level." Notice of the upcoming solicitation was published in the Arizona Record Reporter on December 6, 2019. The RFP was sent to federal funding partners (CMS and FNS) and ultimately reviewed and approved for publication in January 2020. The RFP was posted on the AHCCCS website on January 17, 2020. A Bidder's Conference was conducted on February 6, 2020. All interested parties were invited, and there was representation at the conference by each Offeror who eventually submitted a proposal. Solicitation Amendment one (1), which included answers to Offerors' questions, was published on the AHCCCS website on February 10, 2020. Solicitation Amendment two (2), which included answers to Offeror's questions, was published on February 28, 2020. The RFP was closed on March 24, 2020, 3:00 PM (Arizona time).

A total of four proposals were submitted to AHCCCS by the due date of March 24, 2020. Alluma's proposal was rejected as not susceptible for award and thus removed from the evaluation process pursuant to the procurement determination issued on March 27, 2020.

The evaluation committee consisted of four highly qualified subject matter experts from both AHCCCS and ADES. The committee thoroughly evaluated each of the three susceptible proposals starting in March 2020 and recommended contract award be made to Accenture. In order to allow each Offeror ample time to inform its internal directors and staff of the contract award prior to posting of the award on the AHCCCS Website, each of the four Offerors was informed personally on a conference call made by the CPO the morning of the award, several hours prior to the award being made public. Once posted publically, all other interested parties were notified of the award, through email and constant contact notification sent by the CPO. Interested parties were also notified where to locate the procurement file.

Post award activities:

On June 26, 2020 Alluma, through its legal representative, submitted a public records request which seeks extensive public records. On an ongoing basis, AHCCCS has been providing responsive public records. On July 6, 2020 Alluma, through its legal representative, filed a procurement protest.

The following are the issues presented by Alluma's protest followed by AHCCCS' response.

1. Lack of Transparency in the Procurement File.

Alluma claims "The procurement file did not include a host of materials relevant to Alluma's evaluation of the legal and factual bases of its protest."

AHCCCS Response

AHCCCS timely posted the Procurement File on the date of award, June 26, 2020. Consistent with the requirements set forth in A.A.C. R9-22-601, the procurement file includes "a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report."

Alluma claims Accenture's proposal was so heavily redacted, that Alluma was unable to evaluate the propriety of the State's evaluation and award decision.

AHCCCS Response

As stated above, the procurement file was timely posted in accordance with A.A.C. R9-22-601. The procurement file contained, among other documents, all Offeror's proposals as well as final proposal revisions through Best and Final Offers or "BAFO".

In terms of redactions due to confidentiality, the RFP instructions explicitly permits all Offerors to request portions of their proposal and the BAFO to be designated as confidential by submission of a "detailed legal analysis, prepared by legal counsel, which sets forth the bases for the requested non-disclosure and the specific harm or prejudice which may arise if disclosed." (Special Instructions to Offerors, Paragraph 12) Offerors are prohibited from marking their entire proposal as confidential, and pricing is specifically identified as not confidential. Moreover, it is not uncommon for portions of an RFP to be designated as confidential, particularly in the case of highly technical procurements. Three of the four bidders submitted detailed legal analyses substantiating the confidentiality of specific portions of their bids.

To obtain the RFP materials which have been designated as confidential, Alluma's extensive June 26 public records request seeks, in part, "fully unredacted proposals, amendments, addenda and best and final offers (BAFO's) submitted in connection with the RFP." The legal requirements governing disclosure of public records is separate and distinct from the procurement process, and Alluma was promptly provided responsive public records. Although AHCCCS discloses public records as required by law, the confidential information sought by Alluma is subject to the following process consistent with the terms set forth in the RFP:

"In the event that AHCCCS receives a request for disclosure of the information, AHCCCS shall disclose the information in accordance with law. Prior to disclosure, AHCCCS will inform the Offeror of such request and provide the Offeror a period of time to take action it deems appropriate to support non-disclosure. The Offeror shall be responsible for any and all costs associated with the nondisclosure of the information."

Moreover, Alluma's primary argument reduces to the propositions that the other three offerors either did not understand AHCCCS' needs or provided "below market" bids and that Accenture won the contract at a cost that is "not feasible." The protest, however, fails to demonstrate any reason to believe the other offerors failed to understand AHCCCS' needs or that Accenture will be unable to fulfill the contract for the cost it proposed. Even if it could do so, Alluma fails to explain why, if Accenture has underbid the cost of the contract, this is anything other than Accenture's problem or how receiving confidential information from Accenture will change this fact.

Alluma alleges the procurement determination "may have relied improperly on records outside the scope of the submitted procurement materials" given that the following information was included in the procurement determination "as the incumbent contractor, Alluma's offer proposes an increase of more than 35% for Maintenance and Operations costs compared to current contract expenditures for Maintenance and Operations."

AHCCCS Response

Alluma's proposal was rejected as not susceptible for award due to Alluma's extraordinarily excessive 5 year cost bid as compared to the cost bids furnished by every other Offeror. Not only was Alluma's 5 year cost bid approximately \$90 million dollars above the highest cost bid submitted for this RFP and approximately \$100 million above the lowest cost bid, it exceeded the sum of all three other cost bids. While Alluma's 5 year cost bid exceeded \$138 million, all other bids resided within a relatively narrow range of approximately \$36 million to \$54 million. The reference in the procurement determination to current contract expenditures for Maintenance and

Operations simply illustrated how much of an outlier Alluma's proposal was; it does not represent records outside the scope of the submitted procurement materials that were made available to the Committee.

As specified in Paragraph 3 "Evaluation Criteria" of the Special Instructions to Offerors, the State is required to issue the award to the proposal determined to be most advantageous to the State based upon the evaluation criteria, including cost. Adherence to mandatory requirements, experience/expertise, and methodology are the remaining three additional evaluation criteria. Significantly, cost effectiveness is a critical factor in the evaluation of the RFP and the determination for award. Paragraph 3 of the Special Instructions to Offerors further provides that proposals will be evaluated based upon the Offeror's ability "to satisfy the requirements of the RFP in a cost-effective manner." An indispensable element for award of the HEAplus contract is the selection of an Offeror which provides the best value to the State.

The Scope of Work, Paragraph 2 "Legal Authority" specifies that the HEAplus solicitation and any resultant contract "is being entered into pursuant to A.R.S. § 36-2906, and any rules adopted thereunder." The applicable administrative rules which govern the RFP and the protest process are set forth in Title 9 Chapter 22 Article 6. As provided by A.A.C. R9-22-602(C), AHCCCS is authorized to reject any proposal if it determines that rejection is in the best interest of the State. In addition, A.A.C. R9-22-604 provides that AHCCCS shall award a contract to the Offeror whose proposal is determined most advantageous to the State. Alluma's exorbitant cost bid, in comparison to all other cost bids, is not consistent with providing the best value to the state. Nor can Alluma's bid be considered to be in the best interest of, or the most advantageous to, the state.

Alluma's proposal was properly rejected by the AHCCCS CPO as not susceptible for award: its exorbitant cost bid is contrary to the best interest of the State. Moreover, because the HEAplus system has been built and is in operation, cost bids associated with the RFP (excluding the SR process as discussed infra) were not anticipated to grow significantly, if at all. Moreover, "hosting" is not an HEAplus RFP requirement, in contrast to the responsibilities arising under the existing HEAplus contract. Refer to Scope of Work Paragraph 5.1 which provides:

5.1. Future State Currently the HEAplus system is hosted on premise and managed by the incumbent contractor on State-owned servers. The intent of the State is to have the HEAplus system fully migrated to a cloud hosted solution in advance of the start date of this contract. The Offeror shall propose its solution with the assumption that the system will be fully migrated to the State's cloud vendor, Azure, and shall be hosted and maintained in this environment for the term of this contract. If for some reason the system is not fully migrated to the cloud in advance of the start date of this Contract, the State will work with the stakeholders including the awarded Contractor and the incumbent contractor, to develop a plan of action to complete the full migration. The plan of action will include issuing a contract amendment for activities relating to the finalization of the migration.

Thus, limited costs for services and maintenance associated with hosting arise under the HEAplus RFP. Nor are costs contemplated for building the underlying system. In light of the three other proposals submitted, Alluma's cost bid for operations and maintenance of HEAplus is inconsistent with providing the best value to the State, with being the most advantageous to the State, or with satisfying RFP requirements in a cost-effective manner. Moreover, it is entirely reasonable and prudent for the State to consider the cost associated with the current HEAplus contract when explaining why Alluma's proposal was not susceptible for award of this contract. That Alluma is the current contractor is not relevant.

Alluma's award was rejected due to its unreasonably excessive cost bid in relation to the amounts bid by the three other bidders, and the CPO's reference to Alluma's proposed 35% cost increase is not inconsistent with that determination. The procurement determination issued by AHCCCS on March 27, 2020 states the following;

After careful review of the proposal submitted by The Center to Promote Healthcare Access, dba Alluma, the Chief Procurement Officer has determined that the proposal is not susceptible for award for the following reason:

- The proposal is unreasonably high in comparison to other proposals received.
 - a. The 5 year cost submitted by Alluma for all scored portions is \$138,863,613 in comparison to the other proposals at \$36,592,728, \$41,277,318 and \$49,959,499. Alluma’s proposal is 178-279% higher than the other offers received. See cost scoring methodology for description of scored portions.
 - b. The total 5 year cost submitted by Alluma for all portions, scored and not scored, is \$139,362,536 in comparison to other proposals at \$42,031,087, \$53,881,208 and \$43,540,325. Alluma’s total 5 year cost proposal is between 159-232% higher than the other offers received.
 - c. Additionally, as the incumbent contractor, Alluma’s offer proposes an increase of more than 35% for Maintenance and Operations costs compared to current contract expenditures for Maintenance and Operations.
- The agency chief procurement officer also determines that prompt notification to Alluma would compromise the State’s ability to negotiate with other offerors, thus this determination is confidential until date of award.

Therefore, pursuant to R9-22-602, the proposal is hereby rejected.

To place the cost bids in perspective, the initial proposed costs submitted by each Offeror for the scored portions of the RFP are included below for comparison:

Accenture	Deloitte	Optum	Alluma
\$ 41,277,318.00	\$ 49,959,499	\$ 36,592,728	\$ 138,863,613

Alluma alleges the following: “Based on the press release, it appears that at least a portion of the ultimate contract award to Accenture was not subject to a public procurement process in accordance with Arizona law. Neither the procurement file nor the RFP contain information supporting an additional \$82 million award to Accenture, beyond the \$39 million awarded for M&O services. Other than a vague reference in Page 9 of 25 the Scoring Methodology to “additional scope of work and information presented and discussed during the offeror’s demonstration of its solution,” there is no apparent request in the RFP itself for “new development and infrastructure that may occur” over the contract’s term, nor were offerors’ asked to provide a cost proposal for new development and infrastructure. If the additional \$82 million awarded under the contract was not identified in the RFP, not publicly bid in accordance with the Arizona Procurement Code, or was based on an evaluation of factors outside the RFP, the contract award cannot be permitted to stand.”

AHCCCS Response

Contrary to the assertions presented by Alluma, the RFP clearly addressed “new development and infrastructure that may occur.” These elements were specified in the RFP and were included within the scope and requirements of the contract, noting that costs for these activities would be negotiated on an as needed basis and/or paid through cost reimbursement. The amounts included in the ultimate award were estimate amounts (not guaranteed) and were based upon historical expenditures in these categories.

In the RFP, new development is carried out through a System Request, or “SR”, which is defined in the Definitions section of the RFP as follows:

SYSTEM REQUEST: (SR) A request provided by the State to the Contractor to perform a service on behalf of the State. SR requests include HEAplus system enhancements and developments or additional consulting services related to HEAplus.

Paragraph 5 of the RFP, Scope of Work, states: *“The Contractor will be responsible for maintenance and operations of the HEAplus E&E system with some development as needed if new initiatives arise from a State or Federal level.”*

More explicitly, Solicitation Amendment 2, Items 29 and 53, explain that *“The costs for responding to SRs will be separate from Offeror’s cost proposal to this RFP as new development costs are unable to be quantified at this time. All SRs will be developed and priced separately with the awarded Contractor with a not to exceed price on an as needed basis.”*

<p>(29) Can the State please clarify where and what the bidder should provide with respect to the Service Request cost in the Exhibit B Cost Sheet?</p>	<p>Offerors should not include new development SRs into their cost proposal. The costs for responding to SRs will be separate from Offeror’s cost proposal to this RFP as new development costs are unable to be quantified at this time. All SRs will be developed and priced separately with the awarded Contractor with a not to exceed price on an as needed basis.</p>
<p>(53) There are several statements in the RFP documents, specifically Section 4.6 and Requirement 100200 from Exhibit A, that refer to the process of implementing enhancements to the system via System Requests (SRs). Can the State please clarify whether activities related to SRs (from requirements through implementation) should be included in the fixed-price M&O bid? If so, how many SR hours should vendors plan for on an annual basis?</p>	<p>Refer to AHCCCS’ response to Question #29.</p>

In terms of infrastructure costs, the RFP specifies that Infrastructure costs, which includes software and licensing among other costs, would be paid on a cost reimbursement basis. Refer to Solicitation Amendment 2, Item 1 below:

<p>(1) The Software Inventory section of the HEAplus Infrastructure Inventory provides a list of software types that are in use in the HEAplus environments. Will the State provide products names in use for each of the list software types?</p>	<p>Upon contract execution, the State will provide the full software inventory to the Contractor and the Contractor shall be responsible for procuring the necessary licenses to meet the needs of the contract. The State will then work with the Contractor to amend the contract costs accordingly and will reimburse the Contractor for all necessary licensing. Do not include software and licensing in your Exhibit B - Cost Proposals.</p>
--	--

It is worth noting that the State’s existing contract with Alluma is structured in a similar fashion. Further contradicting Alluma’s position is Paragraph 6, Scope of Work, “Contractor Responsibilities” which states that *“The Contractor shall be responsible for carrying out all activities identified within this RFP and completing all Contractor requirements specified in Exhibit A - Technical Proposal.”*

The Requirements Tab of Exhibit A sets forth various responsibilities for SR’s. In addition, Scope of Work, Paragraph 4.6.1.2, “System Requests” delineates the SR process in extensive detail. In terms of staff positions with SR-related responsibilities, the key position of Software Development Manager (Scope of Work, Paragraph 5.4) “is

responsible for managing SRs for new software development and enhancements to existing functionality as requested by the State.” Other staff have related responsibilities.

Accordingly, the SR process, along with associated costs, is clearly described in the RFP. New development and infrastructure upgrades were included in the scope and requirements of the RFP. Costs for these activities would be negotiated on an as needed basis and/or paid for through cost reimbursement. Equally as important, Alluma failed to timely file a protest as required by A.A.C. R9-22-604(D)(1) or (2) to allege improprieties in an RFP or an amendment to an RFP.

Alluma contends that the CPO did not “notify Alluma of the Procurement Determination immediately (that is, at a time when Alluma could have challenged the susceptibility determination and before it was materially prejudiced by its elimination from consideration), because the CPO found, without further justification, that “prompt notification of Alluma would compromise the State’s ability to negotiate with other offerors.”

AHCCCS Response

A.A.C. R9-22-602(C)(3) and (4) provide:

“(3) The Administration shall provide written notification to an offeror whose proposal is rejected. The rejection notice shall be part of the contract file and a public record.

(4) If the Administration determines that it is in the best interest of the state, the Administration may reject any and all proposals, in whole or in part, under the RFP. The reasons for rejection shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state’s employees or agents if a proposal is rejected in whole or in part.”

AHCCCS rule does not mandate any particular timeframe for written notification of rejection nor does the rule specify that notification must occur prior to contract award. Consistent with rule, AHCCCS set forth the reasons for rejection and, though not required, also specified the rationale for issuing notification at the time of award:

“The agency chief procurement officer also determines that prompt notification to Alluma would compromise the State’s ability to negotiate with other offerors, thus this determination is confidential until date of award.”

Failure to receive notification of rejection was not prejudicial to Alluma. As AHCCCS rule requires that the procurement file be maintained as confidential until the completion of the procurement, earlier notification of the proposal rejection would not have permitted Alluma access to the procurement file in advance of award. Accordingly, Alluma would have been precluded from challenging the susceptibility of award determination prior to the date of award even with earlier communication of the rejection.

2. The RFP Appears to Rely on the Incorrect Procurement Authority.

Alluma alleges that the procurement was issued under the incorrect procurement authority.

AHCCCS Response

The HEAplus procurement is not subject to the Arizona Procurement Code. In accordance with Arizona law and the explicit terms of the RFP, YH20-0001 was issued under AHCCCS statutes and administrative rules—not the Arizona Procurement Code. Nevertheless, it is important to note that the AHCCCS procurement process closely aligns with the Arizona Procurement Code process, and the actions taken are consistent with both AHCCCS provisions as well as the Arizona Procurement Code, and Alluma alleges no prejudice to it from the AHCCCS procedures.

Pursuant to ARS § 41-2501, AHCCCS is exempt from the Arizona Procurement Code with respect to provider contracts and contracts for goods and services. This exemption is further underscored by A.A.C. R9-22-601(C) which exempts the Administration from the Arizona Procurement Code and provides the AHCCCS Director full operational authority to adopt rules for the RFP process and the award of contracts under ARS § 36-2906. ARS § 36-2906(C) creates a “request for proposal process” and ARS § 36-2906(A) gives AHCCCS the authority to “review the proposals” and “award contracts” without limitation as to particular subjects.

The HEAplus eligibility and enrollment system constitutes an essential and fundamental Medicaid “goods and service,” exempt from the Arizona Procurement Code. Furthermore, the legal authority underlying the HEAplus RFP is unambiguous: The RFP Scope of Work, Paragraph 2 “Legal Authority” provides that “This solicitation and any resultant contract is being entered into pursuant to A.R.S. § 36-2906, and any rules adopted thereunder.” As with other aspects of the protest alleging improprieties in an RFP or an amendment to an RFP, Alluma failed to timely file a protest as required by A.A.C. R9-22-604(D)(1) or (2). See also Uniform Instructions 6 and 7.

3. The Procurement Determination that Alluma Was “Not Susceptible for Award” Violates Applicable Law.

Alluma alleges that the procurement determination violates AHCCCS procurement regulations

AHCCCS Response

AHCCCS rule A.A.C. R9-22-602(C)(4) states “If the Administration determines that it is in the best interest of the state, the Administration may reject any and all proposals, in whole or in part, under the RFP. The reasons for rejection shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state’s employees, or agents if a proposal is rejected in whole or in part.”

Consistent with the above administrative rule, Alluma’s proposal was rejected precisely because of the best interest of the state. It is clear from the cost bid that Alluma’s proposal could not be construed as the most advantageous to the state. Maximizing the value of public monies to the greatest extent possible is a crucial objective of public procurements, whether conducted under AHCCCS’ authority or pursuant to the Arizona Procurement Code. AHCCCS, like other public entities, must serve as a responsible, prudent steward of taxpayer funds and resources. Given the non-competitive nature of Alluma’s cost bid, awarding the contract to Alluma is quite simply incompatible with the best interest of the state.

As set forth in the RFP, proposals were evaluated based upon the Offeror’s ability “to satisfy the requirements of the RFP in a cost-effective manner.” The Special Instructions to Offerors, Paragraph 3 “Evaluation Criteria,” noted

that the award would be issued to the proposal determined to be most advantageous to the State based upon the evaluation criteria, including cost.

Alluma's 5 year cost bid is exorbitant as compared to the cost bids furnished by every other Offeror: Not only was Alluma's 5 year cost bid approximately \$90 million dollars above the highest cost bid submitted for the HEAplus RFP and approximately \$100 million above the lowest cost bid, it exceeded the sum of the remaining three other cost bids. While Alluma's 5 year cost bid exceeded \$138 million, all other bids resided within a relatively narrow range of approximately \$36 million to \$54 million.

To reiterate, the March 27 procurement determination provided the reasons for the CPO's decision:

- *The proposal is unreasonably high in comparison to other proposals received.*
 - a. *The 5 year cost submitted by Alluma for all scored portions is \$138,863,613 in comparison to the other proposals at \$36,592,728, \$41,277,318 and \$49,959,499. Alluma's proposal is 178-279% higher than the other offers received. See cost scoring methodology for description of scored portions.*
 - b. *The total 5 year cost submitted by Alluma for all portions, scored and not scored, is \$139,362,536 in comparison to other proposals at \$42,031,087, \$53,881,208 and \$43,540,325. Alluma's total 5 year cost proposal is between 159-232% higher than the other offers received.*
 - c. *Additionally, as the incumbent contractor, Alluma's offer proposes an increase of more than 35% for Maintenance and Operations costs compared to current contract expenditures for Maintenance and Operations.*
- *The agency chief procurement officer also determines that prompt notification to Alluma would compromise the State's ability to negotiate with other offerors, thus this determination is confidential until date of award.*

In addition, Alluma's contention that it was unfairly denied an invitation to negotiations or opportunity to submit a BAFO is misplaced. The RFP provides otherwise. Paragraph 11 of the Special Instructions to Offerors provides:

"Final Proposal Revisions / Best and Final Offers: Written Final Proposal Revisions, or Best and Final Offers, will be requested from any Offeror with whom negotiations have been conducted, unless the Offeror has been determined not within the competitive range, not susceptible for award or nonresponsible. "

Alluma alleges that the procurement determination violates the Arizona Procurement Code and ADOA Procurement Regulations

AHCCCS Response

The AHCCCS procurement provisions, not the Arizona Procurement Code, govern the HEAplus procurement. As discussed at length earlier, the procurement was conducted in accordance with state laws, regulations, and RFP provisions. Nevertheless, the March 27 CPO procurement determination is supported by both AHCCCS procurement requirements as well as Arizona Procurement laws and regulations. Both procurement authorities and processes are closely aligned. Among a multitude of other similarities, both mandate that awards be made to the offeror whose proposal is determined to be the most advantageous to the state. Refer to ARS §41-2534 and A.A.C. R2-7-C317 for procurements pursuant to the Arizona procurement provisions.

Alluma argues that ADOA's procurement regulations "contain a presumption in favor of including proposals in the full evaluation" and that had the procurement been conducted pursuant to the Arizona Procurement Code, the "non susceptibility to award" determination due to its cost bid would not be permissible.

Arizona Procurement regulation A.A.C. R2-7-C311 "Determination of Not Susceptible to Award" supports the March 27 CPO procurement determination. This rule provides that "An agency procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award." Furthermore, subsection (A)(3) specifies the following as a basis for such a determination:

"The offer is not susceptible for award in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award, the offer should be included for further consideration."

As previously discussed, Alluma's exorbitant cost bid, in comparison to all other cost bids, is not consistent with providing the best value to the state. Nor can Alluma's bid be considered to be in the best interest of, or the most advantageous to, the state. Paragraph 3 "Evaluation Criteria" of the Special Instructions to Offerors reiterates that awards will be made to the Offeror whose proposal is determined to be the most advantageous to the state. This section clarifies that proposals will be evaluated based upon the Offeror's ability "to satisfy the requirements of the RFP in a cost-effective manner." Alluma's cost bid is beyond any reasonable construction of cost effectiveness. No doubt existed with respect to the susceptibility of award, and thus, further consideration of the offer was not warranted.

Alluma alleges that its proposal was not evaluated in accordance with the evaluation criteria.

AHCCCS Response

Alluma incorrectly contends that "the Procurement Determination is directly contrary to both the RFP and Arizona law on a fundamental precept of public procurement" and that the rejection "amounted to an impermissible modification of the relative order of the evaluation criteria's importance." For the reasons discussed earlier, the RFP was issued, evaluated, and awarded in accordance with applicable procurement laws, regulations, RFP provisions, and procurement best practices. Alluma's cost proposal was exorbitant, was not in the best interest of the state, was not the most advantageous to the state, failed to provide the best value to the state, and failed to satisfy the RFP requirements in a cost effective manner. Accordingly, Alluma's proposal was properly rejected.

Alluma alleges that the procurement determination was inconsistent with AHCCCS' past practices

AHCCCS Response

Alluma attempts to compare the Works Portal RFP to the HEAplus RFP, contending that "past practice supports full evaluation of proposals regardless of price differential." First, each solicitation award is unique and judged on its own terms. Second, Alluma's characterization of past practice is not accurate. Each AHCCCS procurement is unique in complexity, format, cost pricing analysis, and other factors such that comparisons are not appropriate. No prior RFP issued by AHCCCS presents a similar pattern of cost proposals as presented by the HEAplus RFP where all cost bids, with one exception, fell within a relatively close range. One HEAplus Offeror's cost bid (Alluma's) represents an extreme outlier.

The range of bids and resulting cost pattern for the Works Portal RFP are entirely dissimilar to those submitted for the HEAplus procurement. With respect to the Works Portal RFP, cost proposals were submitted by 10 offerors

representing a broad range of low, mid, and high pricing. Also critical is consideration of the cost differential from low bid to high bid in the two procurements: As previously noted, the HEAplus cost bid presented an approximate \$90 million differential (when comparing Alluma's bid to the next highest cost bid) whereas the Works Portal presented less than a \$15 million differential when comparing the **highest** bid to the **lowest**. Accordingly, awarding the HEAplus contract to Alluma presents an **approximate \$90 million additional cost to Arizona taxpayers**, as opposed to **less than \$15 million**, in the case of the Works Portal procurement.

Moreover, Alluma incorrectly states that AHCCCS did not determine any of the proposals in the Works Portal to be not susceptible for award: AHCCCS determined that six of the proposals submitted were "not susceptible for award in comparison to other offers based on the criteria set forth in the solicitation." The remaining proposals which proceeded to the evaluation process were priced very differently where some congregated with high bids and others clustered lower. Thus, the circumstances for the Works Portal RFP are not remotely comparable to those of the HEAplus RFP as demonstrated below.

Although Alluma claims that "Accenture's proposal (for \$16.8 million) was more than 442% higher than the lowest cost evaluated option by SIS/Alluma (for \$4.4 million)," it is also worth noting that the BAFO submission by SIS was \$3.8 million and the BAFO submission by Accenture was \$16.9 million. The four BAFO offers submitted the following BAFO price proposals: Deloitte at \$16.8 million, Accenture at \$16.9 million, Cognosante at \$4.7 million and SIS at \$3.8 million. Because the pricing proposals submitted in connection with the Works Portal procurement were varied and not clustered in one general area, it was entirely reasonable and appropriate to retain these proposals in the BAFO process for consideration.

4. The CPO Incorrectly Found That Alluma's Offer Was Not Susceptible for Award.

Alluma alleges that its Proposal Best Met the RFP's Most Important Evaluation Criteria, and that Alluma's Cost Proposal Was Feasible, Reasonable Based on the RFP's Requirements, and Supported by Alluma's Significant Experience with HEAplus.

AHCCCS Response

Alluma contends that its cost proposal was reasonable and that the awarded \$39 million cost "is not feasible, given the scope of the work required by the complex HEAplus E&E system." In addition, Alluma speculates that it would have scored higher than the winning offeror. Notwithstanding Alluma's perspective and for the many reasons discussed previously, the procurement determination is consistent with the applicable legal authorities and the pertinent facts. The June 26 contract award comports with laws, rules, and the RFP provisions.

CONCLUSION

For the reasons discussed above, AHCCCS rejects the arguments presented in Alluma's protest 1) to support stay of the contract implementation pending resolution of this protest, 2) to sustain Alluma's protest, 3) to issue the contract award to Alluma, and 4) to reissue the solicitation. Therefore, Alluma's protest is denied in the entirety.

I also deny your request for a stay of implementation because, applying the criteria of A.A.C. R9-22-604(E), I do not believe a reasonable probability exists that the protest will be sustained, and I do not believe a stay would be in the best interest of the State.

In accordance with A.A.C. R9-22-604(I) Alluma may file an appeal of the procurement officer's decision within five (5) days from the date the decision is received. Any appeal shall contain the information specified in A.A.C. R9-22-604(I)(2).

Sincerely,



Meggan LaPorte (Jul 24, 2020 15:53 PDT)

Meggan LaPorte, MSW, CPPO
AHCCCS Chief Procurement Officer
Procurement@azahcccs.gov