

10/6/2020

House State Affairs

Presentation on Procurement and Contracts

It appears that RFP 2020-0200-4381 was developed and conducted with severe faults, including:

- illegal specifications
- unduly restrictive responsiveness requirements,
- irrelevant required services,
- suppression of competition,
- failure to preserve critical public records,
- contract execution in willful violation of a clear due process statutory restraint,
- contract execution despite the lack of statutorily required licensing.

Why the State of Alaska puts competition first and foremost in public procurement:

Alaska Caselaw: *McBirney & Associates v State of Alaska*

“...The state has an established procurement process which includes competitive bidding. The purposes of competitive bidding are to ***prevent fraud, collusion, favoritism, and improvidence*** in the administration of *1136 public business, as well as to ensure that the [state] receives the best work or supplies at the most reasonable prices practicable. ... [T]he requirement of public bidding is for the benefit of property holders and taxpayers, and not for the benefit of the bidders; and such requirements should be construed with the primary purpose of best advancing the ***public interest*** .”

-Supreme Court, State of Alaska, April 15th, 1988

Procurement Background

From the State of Alaska Procurement Manual:

The State of Alaska has several procurement methods available to ensure that when an agency acquires goods or services, they are procured at the best possible cost to meet the needs of the agency while promoting fair and open competition and protecting the interests of both the state and the vendors.

ETHICS IN PUBLIC PROCUREMENT

Because public procurement involves the obligation and expenditure of public funds, ethics play a major role in the procurement process.

Procurement Background: Con't

From the Procurement Manual:

COMPETITION

Alaska's procurement code is written to encourage the most competitive procurement methods be used before less competitive methods are considered. Competition is important to both the state government and the vendor community in that it encourages not only better pricing and value, but also fairness, transparency, and innovation.

AS 36.30.100 states that "an agency contract shall be awarded by competitive sealed bidding" unless otherwise permitted. This is because the competitive sealed bid, or Invitation to Bid, process, is generally recognized to be the most open and competitive procurement method because it is easily understandable and contract awards made as a result of this process are based on the lowest cost offered to the state.

Agencies are permitted to use other procurement methods described in AS 36.30, provided they meet the requirements for using those methods. Other methods include the competitive sealed proposal, or Request for Proposal, process, which awards based on other evaluation criteria in addition to cost, and the single source alternate procurement, which is the least competitive process.

Regardless of the procurement method used, how an agency describes what they need can also affect competition. In general, this description – referred to as the specification – should be written to allow as much competition as possible.

RFP2020-0200-4381

- Consolidation of IT, Shared Services, Procurement.

- Project Manager is Commissioner Kelly Tshibaka.

- Request for Proposals (RFP) was issued Sept 19, 2019.



Empowering
Peak Performance
of the State of Alaska's
Administrative Services

SEC. 1.04 PRIOR EXPERIENCE

“Offerors must have experience in strategy, planning, and implementation of large-scale government shared services or Information Technology consolidations. All Offerors must be a member of the National Governors Association Partners (NGA Partners), or a firm that offers all the following services in-house (without subcontracting): professional services, audit, assurance services, taxation, management consulting, advisory, actuarial, corporate finance and legal services. Offerors must have been in business as a company in good standing for at least 25 years.

An offeror’s failure to meet these minimum prior experience requirements will cause their proposal to be considered non-responsive and their proposal will be rejected.”

Contracting Law, Language

- Language matters in procurement law.

- While career staff ensure compliance, the Department is responsible for development of language in any request for proposals and evaluating needs and specifications.

- Placement of “or” here creates two options in the very first sentence.

- Drafting choices such as this have cascading effects in contracts and offerors’ understanding of the requirements.

Prior Experience Clause, Issue 1

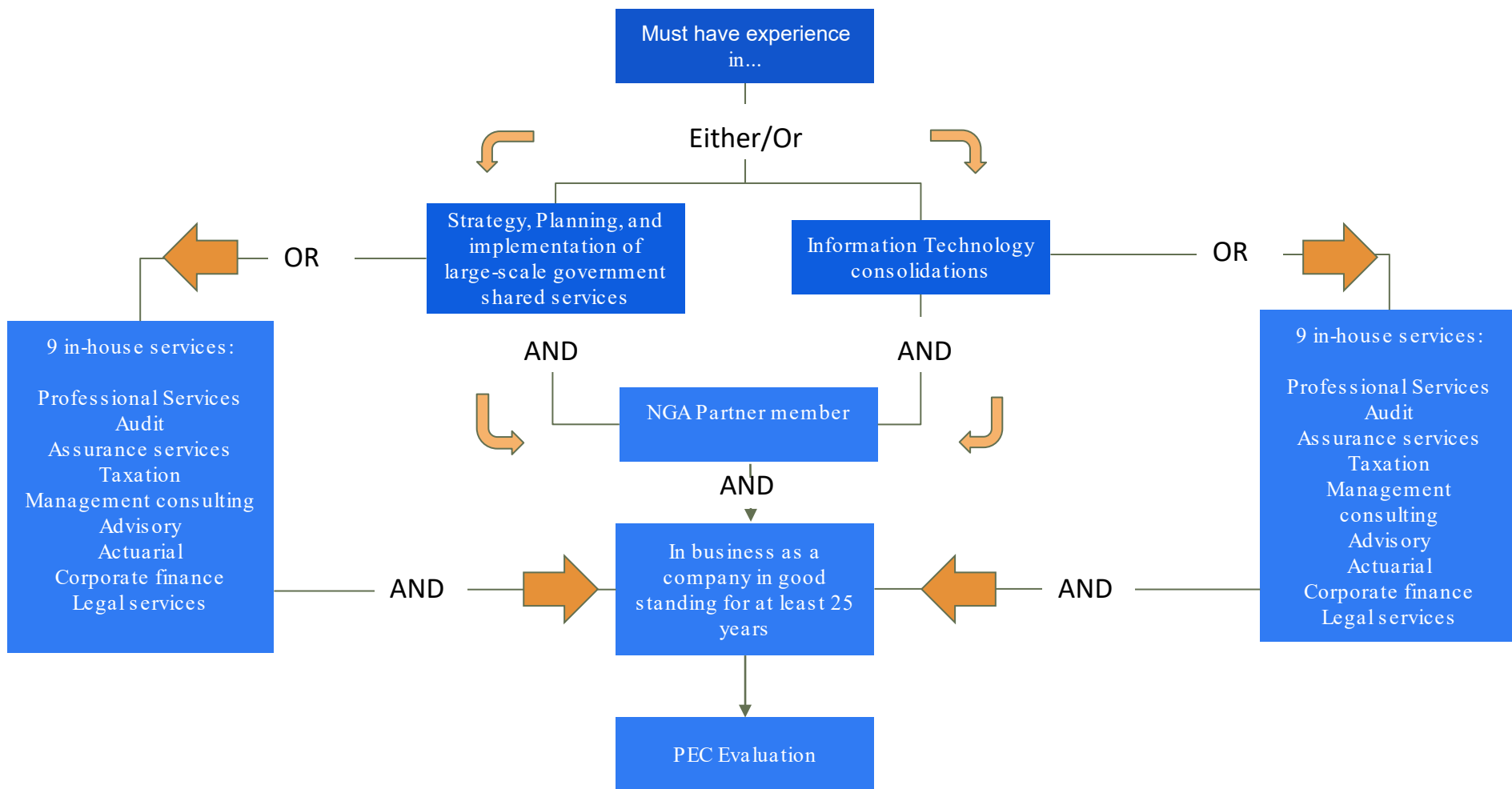
SEC. 1.04 PRIOR EXPERIENCE

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- In contracting law, ambiguities are held against the author of the specification: in this case, the State of Alaska.

- The opening sentence of the prior experience requirement allows potential offerors to have experience in strategy, planning, implementation of large-scale government shared services OR experience in Information Technology consolidations.



SEC. 1.04 PRIOR EXPERIENCE

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Prior Experience:

National Governors Association Membership

- Existed since 1908.
- Partners Program: Corporate Donors: 119 members.
- 2019: net income from “Corporate Fellows” was \$7.3m.
- Partners do not have to have specific specialty or expertise.
- Partner Program: minimum donation is \$5,000.
- Each company here could very well have met the “IT consolidation experience” requirement, the “NGA Partner Member” requirement, and the “in business 25 years and in good standing” requirement.
- Each could have been “responsive”.

“...All Offerors must be a member of the National Governors Association Partners (NGA Partners),”



BDO
performed the
audit for the
NGA in 2019

**National Governors Association and
National Governors Association
Center for Best Practices**

Consolidated Financial Statements
and Supplemental Information
Year Ended June 30, 2019



Procurement Specifications: Statute and Regs

AS 36.30.060 (c), (d)

2 AAC 12.090, 2 AAC 12.790

AS 36.30.060

(c) The commissioner may obtain expert advice and assistance from personnel of using agencies in the development of specifications. Specifications must promote overall economy for the purposes intended and encourage competition in satisfying the state's needs, and may not be unduly restrictive. The requirements of this subsection regarding the purposes and nonrestrictiveness of specifications apply to all specifications, including those prepared by architects, engineers, designers, and other professionals.

2 AAC 12.090. No unduly restrictive specifications

Except for specifications relating to procurements under 2 AAC 12.400(b), all specifications must describe the requirements to be met without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a single source, unless no other manner of description will suffice.

2 AAC 12.790. No restrictive terms and conditions

Contractual terms and conditions may not have the effect of unnecessarily limiting competition or exclusively requiring a proprietary supply, service, or construction item or procurement from a single source unless no other requirements will suffice.

Legislative Legal: NGA Membership

-Unclear how requirement is related to scope of work, or how partner program membership is beneficial to needs of the State of Alaska in this RFP.

-Department has not yet, or ever, offered determination on basis for inclusion of this requirement in RFP.

-Legislative Legal Opinion states that they are unable to establish how court may view reasonableness of this determination; this uncertainty is precisely the sort of confusion the procurement process is designed to avoid. No one knows why NGA membership is there.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-2450
LAA.Legal@akleg.gov
120 4th Street, Room 3

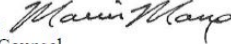
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

October 1, 2020

SUBJECT: Eligibility criteria used in RFP (Work Order No. 32-LS0082)

TO: Representative Zack Fields
Attn: Tristan Walsh

FROM: Marie Marx 
Legislative Counsel

From the lists of NGA Partners and other information provided on the website, the organization does not appear to be for a particular profession or for an organization that specializes in the RFP's listed services. NGA Partners' purpose appears to be to assist governors and the private sector exchange information and discuss issues affecting business and government, and to help fund the NGA Center for Best Practices. Although this is tangentially related to performing governmental work, it is unclear how a contractor's NGA Partners membership is connected to the services being sought in the RFP or how it is sufficiently related to make organization membership an alternative mandatory requirement.

The purposes of competitive bidding are "to prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure that the [state] receives the best work or supplies at the most reasonable prices practicable."⁴ The Procurement Code and its regulations specifically prohibit the use of specifications or contract terms and conditions that are unduly restrictive.⁵ Additionally, AS 36.30.880 requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Amendment to RFP: Answers to Bidder Questions

-At least one bidder asked if the NGA membership requirement could be changed, to require directly relevant experience in the scope of work.

-Rather than explain how NGA membership offers advantage to the State of Alaska and the public interest, the State of Alaska simply said no.

-Other potential offerors requested the State of Alaska extend the bidding period, and were told no.

This Amendment can be acknowledged on Attachment 1, Submittal Form A



Department of Administration
Shared Services of Alaska
State Office Building, Suite 801
PO Box 110210
Juneau, AK 99811-0210

THIS IS NOT AN ORDER

DATE AMENDMENT ISSUED: 10/04/2019

RFP TITLE: **2020-0200-4381 Improvement of Shared IT and Back-office Service Functions**

AMENDMENT 1

7. With regards to section 1.04 which reads: ***All Offerors must be a member of the National Governor's Association Partners (NGA Partners), or a firm that offers all the following services in-house (without sub-contracting): professional services, audit, assurance services, taxation, management consulting, advisory, actuarial, corporate finance and legal services. Offerors must have been in business as a company in good standing for at least 25 years.***

Would the State consider altering this requirement from a paid association membership to a requirement based on experience doing directly relevant work for example: All Offerors must have completed similar projects for 2 US States or country governments and must have revenues greater than \$1B USD.

AMENDMENT 1

Improvement of Shared IT and Back-office Service Functions

RFP 2020-0200-4381

Answer: No.

SEC. 1.04 PRIOR EXPERIENCE

Offerors must have experience in strategy, planning, and implementation of large-scale government shared services or Information Technology consolidations. All Offerors must be a member of the National Governor's Association Partners (NGA Partners), or a firm that offers all the following services in-house (without sub-contracting): professional services, audit, assurance services, taxation, management consulting, advisory, actuarial, corporate finance and legal services. Offerors must have been in business as a company in good standing for at least 25 years.

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An offeror's failure to meet these minimum prior experience requirements will cause their proposal to be considered non-responsive and their proposal will be rejected.

Prior Experience:

In-House Services

-Procurement statutes and regulations hold that specifications in a request for proposals must be related to the work at hand.

-However, they cannot be used to dictate how a business runs its affairs; generally, requirements must be specific, determinable, and increase value to the state without becoming unduly restrictive.

-6 of these in-house services were never addressed after Section 1.04 and Section 4.04, where they were simply listed. There is no attempt to connect them to the purpose of the RFP or the work described therein.

-In sum, all 9 requirements together are unduly restrictive; they are also generic, and ill-defined.

Sec. 36.30.060 "...Specifications must promote overall economy for the purposes intended and encourage competition in satisfying the state's needs, and may not be unduly restrictive. The requirements of this subsection regarding the purposes and non restrictiveness of specifications apply to all specifications."

-List of services needed in-house:

(No subcontracting)

- professional services
- audit services
- assurance services
- taxation services
- management consulting services
- advisory services
- actuarial services
- corporate finance services
- legal services

(Subcontracting not prohibited)

OR...

NGA Membership

-Offerors must have been in business as a company in good standing for at least 25 years.

(d) An agency may not contract for the services of legal counsel without the approval of the attorney general. An agency may not contract for the services of a hearing officer or administrative law judge for an administrative, quasi-judicial hearing without the approval of the attorney general and the chief administrative law judge of the office of administrative hearings (AS 44.64.010).

2 AAC 12.040. Procurement of legal counsel

An agency may not contract for the services of legal counsel without the prior written approval of the attorney general. Contracts for the services of legal counsel may incorporate clauses for adjustments in prices, time of performance, and total dollar amount.

No Written Approval Exists

Under the **Alaska Open Records Law, A.S. Code § 40-25-110 et seq.**, and **2 AAC 12.040**, I am requesting an opportunity to obtain a copy of the required prior written approval of the attorney general to contract for the legal services stipulated in Request For Proposals 2020-0200-4381 under SEC. 1.04 PRIOR EXPERIENCE.

Date of Response 04/20/2020

Description: Media

Good Afternoon Barry, I do not have a record that matches the records description listed in your request.



How are we doing? Please let us know by completing our [5 question survey!](#)

Why does it matter whether the Attorney General must give prior written approval for any contractor to provide “legal services” on behalf of the State?

This is why... taken from the Alvarez & Marsal Contract:

Article 18. No Conflicts:

Notwithstanding anything to the contrary, because the contractor and its affiliates comprise a consulting firm (“Firm”) that serves clients on an international basis in numerous cases, both in and out of court, it is possible that Firm may have rendered or will render services to, or have business associations with, other entities or people which had or have or may have relationships with the State of Alaska. Firm will not be prevented or restricted by virtue of providing the services under this agreement from providing services to other entities or individuals, including those whose interests may be in competition or conflict with the State of Alaska’s, provided Firm discloses the conflict, the state consents, and the contractor makes appropriate arrangements to ensure that the confidentiality of information is maintained.

SEC. 1.04 PRIOR EXPERIENCE

Offerors must have experience in strategy, planning, and implementation of large-scale government shared services or Information Technology consolidations. All Offerors must be a member of the National Governor's Association Partners (NGA Partners), or a firm that offers all the following services in-house (without sub-contracting): professional services, audit, assurance services, taxation, management consulting, advisory, actuarial, corporate finance and legal services. Offerors must have been in business as a company in good standing for at least 25 years.

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RFP 2020-0200-4381 Draft.kct edits 9.19

actuarial, corporate finance and legal services. Offerors must have been in business as a company in good standing for at least 25 years.

Tshibaka, Kelly C (DOA) Inserted

9/18/2019 9:14:00 PM

in good standing

Tshibaka, Kelly C (DOA) Inserted

9/18/2019 9:14:00 PM

25 |

IT 25 years ago in 1995

- Browser war was between Netscape and Microsoft Internet Explorer
- DVD introduced
- Java 1.0 introduced
- Javascript developed
- World Wide Web is beginning to grow quickly (36 million users vs. today's 4-5 billion)
- Compuserve and AOL are the major online services
- First Sony Playstation
- Windows 95 launched (first of new generation Operating Systems)
- Amazon.com opens
- HTML 2.0 is new standard; we are now on HTML 5

How are these relevant to today's IT capabilities and design and development needs?

Why is 25 years in business and in good standing an essential requirement to meeting the needs of the work described by this RFP? It suppresses modern competitors.

Missing Documents

-Three draft versions of RFP were identified, described and withheld on deliberative process privilege on 4/27/2020.

-Drafts show who modified, what they modified, when, and page length.

-At least one document was provided to HSTA on 9/16/2020.

-Now, HSTA is informed the other two drafts can no longer be found. (Original request made on 9/4/2020)

-9/19/19 Draft RFP shows Prior Experience Clause language already existed, and was being developed. It is still unclear who was responsible for developing this language and why, but Commissioner Tshibaka clearly and directly participated.

-This heightens concern that these may be critical documents.

Email Response to
FOIA request dated
4/27/2020

Details of 3 drafts of the RFP prior to publication which are being withheld under an asserted deliberative process privilege.

Drafts are from Commissioner Tshibaka, [redacted] and [redacted] and include commentary as well as red-lined and edited material.

• "Regarding the last two components of your April 27 request, please see the enclosed email, and SSoA is withholding the following drafts of the RFP:

1. a 36-page draft last modified September 19, 2019, 8:41 a.m., including comments and changes of Kelly Tshibaka, Commissioner of the Alaska Department of Administration (DOA), and Officer (This draft of the RFP is the attachment to the enclosed email.);

2. a 36-page draft last modified September 18, 2019, 1:32 p.m., including comments and/or changes of [redacted] Ms. [redacted] and [redacted] Contracting Officer; and

3. a 35-page draft last modified September 16, 2019, 3:21 p.m., including comments and/or changes of [redacted]'s. [redacted] in and [redacted]

None of these drafts have been shared with anyone outside of DOA and, for the purpose of responding to your request, the Alaska Department of Law."

4/27/2020

10/1/2020

Hello

I tried calling but there was no answer. The Procurement Office has searched and they do not have any records of the two items in question. We will look into submitting a request for a back end search through OIT. I'll get back to you as soon as I know how long, etc.

Items to be searched for:

2. a 36-page draft last modified September 18, 2019, 1:32 p.m., including comments and/or changes of [redacted] Contracting Officer; and

3. a 35-page draft last modified September 16, 2019, 3:21 p.m., including comments and/or changes of [redacted] and [redacted]

Thank you.

Respectfully,

The overall result from the Prior Experience Clause is suppression of Competition


- The winning bidder met every single option of the Prior Experience Clause.
- By meeting every single option Alvarez & Marsal, an NGA Partner Member, will be most likely to receive maximum points in the PEC.

Original Message:
Sent: 09-23-2019
From:
Subject: Consulting Firm needed for Statwide Consolidation

Hello-
The State of Alaska is in the process of soliciting for a consulting firm to plan and implement a statewide consolidation of each of the following services, which are currently decentralized: IT, procurement, accounting, and travel services. We are currently unaware of any firms that offer this service and are wondering if anyone out there has gone through a consolidation of services in your State using a consultant. If so, I would appreciate if you could send me the name of the firm your State used. I'm trying to get a list of firms (consultants) to whom I can send our solicitation link.

State of Alaska
Juneau AK

- By improperly disqualifying the only Alaska Offeror, that Alaska Offeror was denied the points scoring benefits of 20% of points for the lowest cost, and the Alaska Bidder Preference of 5% of points, and the Alaska Offeror Preference of 10% of points. Whether intended or not, the only Alaska Offeror, BDO, was denied the benefits of being a qualified Alaska business which utilized an Alaska-based workforce, and the consequential benefits to Alaska's economy.



From: REDACTED@asantealliance.com>

Sent: Monday, October 7, 2019 11:41 AM

To: REDACTED@alaska.gov

Subject: Improvement of Shared IT and Back-office Service Functions RFP # 2020-02004381

Hi REDACTED,

My name is REDACTED and I am with Asante Alliance. We are an Idaho based IT Consulting firm and are very interested in the Shared IT RFP, this is right up our alley. Unfortunately, we just received it today and the deadline is on Friday. I do not think that we will be able to get it through our legal department by then.

I am wondering if there are any other options for us to be able to submit.

Talk to you soon,

REDACTED Account Executive

On Oct 7, 2019, at 2:57 PM,
REDACTED@alaska.gov wrote:

Hello Commissioner Tshibaka-

Please see the email below. I can't find them on the partners list, but they may be able to provide all the services required without subcontracting, I just don't know at this point. Would you be willing to extend the closing date to allow more vendors to submit proposals?

Please let me know your thoughts when you get a moment.

Thank you.

REDACTED Statewide Contracting Officer
State of Alaska Shared Services of Alaska

Phone: REDACTED

<http://doa.alaska.gov/ssoa/>

Subject: Re: Improvement of Shared IT and Back-office Service Functions RFP # 2020-0200-4381

Date: Monday, October 7, 2019 7:27:36 PM

No thank you. We need to get moving. We're already 2 months past time. Our CIO is leaving this week.

Thanks, Kelly

Commissioner Department of
Administration
(907) 269-6293

Effects

The effect of the prior experience clause was to preclude bidders:

- who were not Partner members of NGA, an unaffiliated, irrelevant, voluntary organization, or
- who could not offer the nine in-house services stipulated by section 1.04.
- in so doing, it also eliminated the only Offeror who could receive the scoring benefits of the lowest cost, the Alaska Bidder's Preference, and the Alaska Offeror's Preference.

Further attempts by bidders to compete by becoming members of NGA were denied on the basis of lack of time; there were at least 2 requests to extend the bidding period. Both requests were denied.

The result was that when bids were opened, there was only 1 responsive bidder.

10/7/19: Notice of Intent to Award issued:

BDO Protests

-10/25/19: BDO files formal
Protest

-10/29/19: Protest Response by
SOA

-11/8/19: Protest Appeal by BDO

-12/4/19: Final Decision by SOA

Sec. 36.30.560. Filing of a protest.

An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer of the contracting agency in writing and include the following information:

(1) the name, address, and telephone number of the protester;

(2) the signature of the protester or the protester's representative;

(3) identification of the contracting agency and the solicitation or contract at issue;

(4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and

(5) the form of relief requested.

AS 36.30.365

-To ensure the rights of all bidders are respected and encourage competition, the statute allows for a protest period, requiring that all offerors are notified at least 10 days prior to the formal award of a contract.

-By signing a contract during that ten day period, the SOA eliminated an offeror's rightful remedy, award of the contract, should they win a protest.

Sec. 36.30.365. Notice of intent to award a contract.

At least 10 days before the formal award of a contract that is not for construction, and at least five days before the award of a construction contract, under this chapter, except for a contract awarded under AS 36.30.300 – 36.30.320, the procurement officer shall provide to each bidder or offeror notice of intent to award a contract. The notice must conform to regulations adopted by the commissioner.

-AS 36.30.365 *explicitly* requires at least 10 days between the issuance of the Notice of Intent to Award and the award of a formal contract. There are no exceptions in law or regulation to this requirement. To award a contract before the protest period is over is literally breaking the law.

-In order to honor the rights of an aggrieved bidder to examine the records of the procurement and file a protest, all records including drafts and internal communications must be preserved.



Tel: 907-278-8878
Fax: 907-278-5779
www.bdo.com

3601 C Street, Suite 600
Anchorage, AK 99503

October 25, 2019

To:
Department of Administration, Shared Services of Alaska
Re: RFP 2020-0200-4381

Summary

On behalf of BDO USA, LLP (BDO), this notice serves as the official protest allowed per Sec. 6.20 of RFP 2020-0200-4381.

Legal and Factual Grounds of the Protest

As explained to us via email, the proposal submitted by BDO was found non-responsive and rejected, prior to evaluation of its contents, due to non-compliance with Sec. 1.04 *Prior Experience* requirements. However, BDO is fully compliant and meets or exceeds all prior experience requirements outlined. While BDO's direct response does not specifically note legal services as outlined in Sec. 1.04 of the RFP, all required services are currently performed and offered in-house. Our proposal Attachment 1 - Submittal Form B states: "BDO currently delivers professional services in audit, assurance services, taxation, and business advisory services to include management consulting, advisory, actuarial, and corporate finance, in addition to many other consulting services, to clients throughout the country and around the globe." Legal services, while not directly mentioned, would be included under the service of business advisory, and these services are provided by BDO. In addition, many aspects of legal services are outlined in the proposal by the very nature of working on an integration of shared services, as they are pervasive to any project of this kind. We believe the proposal itself, which was not evaluated, demonstrates an overall competence in all areas of shared services.

In addition, BDO is eligible to join the National Governor's Association (NGA) Partners, and we have verified our eligibility to obtain membership directly with NGA. Should this be an area of preference for the State of Alaska, or an area that would impact the scoring for our qualifications, we are willing to obtain the membership. While we understand and agree that the NGA is a prestigious and worthwhile organization, membership itself is voluntary and not indicative of an ability to perform the services outlined.

Finally, the RFP states in Section 5.01 that the Proposal Evaluation Committee will have a meeting, chaired by the contracting officer, and a group discussion therein. However, if this meeting took place, our proposal would not have been considered, as it was considered nonresponsive prior to that committee's involvement.

BDO Protest:

10/25/19

-BDO Protest shows that Section 1.04 had ironclad consequences: those who did not list legal services in prior experience were excluded.

-Legal services is mentioned nowhere else in the RFP, other than Sect 1.04 and Sec 4.04.

-Vague terminology which is undefined in relation to the work creates ambiguity that is held against the State in contract law.

Protest Response: SOA

10/29/19

-SOA explains that BDO listed all other services except legal services. The State was forced to believe that BDO did not have legal services, nor did it have NGA membership.

-No attempt to clarify BDO possessed in-house legal services by virtue of professional or advisory services by SOA to BDO.

-The State explains that it prevented the bid from being considered at all because it gave the Prior Experience Clause a pass/fail criteria.



Department of Administration

SHARED SERVICES OF ALASKA

8th Floor State Office Building
PO Box 110010
Juneau, Alaska 99811-0010
Main: 907.465.0200
Fax: 907.465.0189
www.das.alaska.gov/hsa

October 29, 2019

3601 C Street, Suite 600
Anchorage, AK 99503

Dear

I am writing in response to BDO USA, LLP's (hereinafter "BDO") protest regarding the state's notice of intent to award resulting from Request for Proposals (RFP) 2020-0200-43B1. Your protest was received on October 25, 2019. The Division of Shared Services of Alaska (SSoA), who conducted this procurement on behalf of the Department of Administration (DOA), has carefully reviewed your protest letter and examined the RFP file along with applicable statutes and regulations. SSoA finds that we must deny the protest for the reasons stated below.

The issues raised in the protest letter were broken down into three parts/grounds and will be discussed individually below in the same format and order listed in the protest letter.

Ground 1: BDO was found non-responsive because it did not specifically note Legal Services as outlined in Sec. 1.04 of the RFP for meeting the minimum prior experience requirements.

Response: Section 1.04 of the RFP lists all prior experience required to qualify as meeting the minimum prior experience requirements. This section states that all Offerors must be a member of the National Governor's Association Partners (NGA Partners), or a firm that offers all the following services in-house (without sub-contracting): professional services, audit, legal services.

BDO failed to identify in their proposal that they were active members of NGA. BDO listed all other required services in their proposal but failed to list Legal Services. The state was forced to believe that BDO did not meet either requirement. The failure of BDO to confirm ability to provide all services required caused their proposal to be found non-responsive and rejected per the definitive instructions listed in Section 1.04 of the RFP.

Protest Appeal: BDO

11/8/19

-BDO appeals the denial of their protest to Dep Commissioner Donley.

-BDO notes that legal services were never addressed in any other section of the RFP, and seem unrelated to the work.

-BDO points out the ambiguity of Section 1.04: "Advisory services" could be interpreted to include legal services; they simply ask their proposal be evaluated in its entirety by the Proposal Evaluation Committee.

-BDO requests evaluation be done "...in light of the project plan, methodology and experience outlined, and not based on membership in a voluntary organization such as the NGA."



Tel: 907-278-8878
Fax: 907-278-5779
www.bdo.com

3601 C Street, Suite 600
Anchorage, AK 99503

November 8, 2019

To: Dave Donley, Deputy Commissioner
Department of Administration, Commissioners Office
Re: RFP 2020-0200-4381

On behalf of BDO USA, LLP (BDO), this notice serves as the official protest allowed per AS Sec. 36.30.560 Appeal on a protest.

Legal and Factual Grounds of the Protest:

It is BDO's position that the letter outlining the State of Alaska's response to our protest as allowed per Sec. 6.20 of RFP 2020-0200-4381 neglected to address our primary reason for protesting. As written in our original protest:

As explained to us via email, the proposal submitted by BDO was found non-responsive and rejected, prior to evaluation of its contents, due to non-compliance with Sec. 1.04 Prior Experience requirements. However, BDO is fully compliant and meets or exceeds all prior experience requirements outlined. While BDO's direct response does not specifically note legal services as outlined in Sec. 1.04 of the RFP, all required services are currently performed and offered in-house. Our proposal Attachment 1 - Submittal Form B states: "BDO currently delivers professional services in audit, assurance services, taxation, and business advisory services to include management consulting, advisory, actuarial, and corporate finance, in addition to many other consulting services, to clients throughout the country and around the globe." Legal services, while not directly mentioned, would be included under the service of business advisory, and these services are provided by BDO. In addition, many aspects of legal services are outlined in the proposal by the very nature of working on an integration of shared services, as they are pervasive to any project of this kind. We believe the proposal itself, which was not evaluated, demonstrates an overall competence in all areas of shared services.

It is BDO's position that it is not reasonable to throw out an entire proposal based on the omission of one word, in this case 'legal', when the definition or scope of the 'legal services' required were not addressed in any subsequent section of the RFP. Additionally, it can be reasonably concluded that BDO's inclusion of 'advisory' services would cover the 'legal' services that the State requested be offered in the RFP, especially when you evaluate our proposal on its merit and in its entirety and take into consideration the technical response to the requirements outlined in each section of the State's RFP.

Final Decision: SOA

12/4/19

-Only 1 offer was presented to the Proposal Evaluation Committee.

-The result of the Prior Experience Clause was that its language was unduly suppressive of competition, ambiguous, and with regard to the inclusion of the “legal services” requirement, violated a specific Statute and Regulation.

-These defects effectively prevented at least one viable Alaskan competitor from being evaluated by the PEC.

-By declaring the appeal as a matter of law, and facts not in dispute, the State avoided an independent administrative hearing, and therefore further scrutiny of an irregular bidding process.



A majority of funds appropriated for the operation of State government and the conduct of its day-to-day business are spent through the State's procurement system.

That system is purposely constructed to fairly and economically acquire goods, services, and supplies in a manner that promotes the public interest and the confidence of its citizenry.

Fair competition is the keystone to promoting that confidence and the public interests.

Examination of several recent large procurements reveals that faults underpin many.

A pattern is emerging that the State's Procurement function is being utilized in a manner that both demotes the public interest and the confidence of the citizenry, and promotes malfeasance.

Recent procurement misconduct demands continuing examination and oversight.

The State's Procurement function is being utilized to direct State funds toward friends and favored parties through pressure; manipulation of Statutes and Regulations; willful ignorance of procurement laws and standards; and outright deception directed towards career procurement officials for the purpose of obtaining a desired outcome.

-Alvarez & Marsal (\$5,000,000).

-Tandem Motion (\$15,000,000).

-API -Wellpath (\$140,000,000).

-Microsoft Azure Cloud Usage work with no contract (\$15,000,000).

-AIDEA Clark Penney contract (\$400,000) .

-Emergency RAP allowing unrestricted contracting (\$3,000,000).

- Microsoft Memorandum of Understanding with OIT for free work on Azure Cloud.

- Removal of former CPO after threatening to reduce salary if reappointed.

- Hiring of new CPO at \$70,000 higher salary than previous CPO.

- Use of State letterhead for multiple favorable recommendations by Commissioners and other highly placed partially exempt appointees to influence the award of a multi-million dollar State contract to a favored Offeror in what was supposed to be a competitive bid process.

Thank you;

Questions?