

Hopping Green & Sams

Attorneys and Counselors

July 22, 2016

VIA HAND DELIVERY AND EMAIL

Ray Hill
Purchasing Director of Columbia County
135 NE Hernando Avenue, Ste. 203
Lake City, FL 32056-1529

RE: Formal Written Protest
RFP#2016-M — Countywide Ambulance Service

Dear Mr. Hill:

Our office represents Lifeguard Ambulance Service of Florida, LLC (“Lifeguard”). In accordance with section 304.8.3 of the *Purchasing Policies and Procedures of Columbia County*, please accept this correspondence as a formal written protest of the intended award of the bid for countywide ambulance service procured pursuant to RFP#2016-M to Century Ambulance Service, Inc. (“Century”). As further discussed below, Columbia County (“County”) lacked authority to engage in a re-solicitation of proposals for countywide ambulance services while a challenge to the prior solicitation for countywide ambulance service was pending in circuit court. Furthermore, the County’s evaluation team evaluated and scored the proposals inconsistently and incorrectly, both individually and as compared to one another, rendering the County’s proposed contract award arbitrary, capricious, contrary to competition, and otherwise contrary to law. In accordance with section 304.8.4 of the *Purchasing Policies and Procedures of Columbia County*, the details of Lifeguard’s formal written protest are as follows:

- 1) Columbia County bid number and description as advertised
RFP#2016-M: Countywide Ambulance Service
- 2) Name and address of company or person filing the protest

This protest is filed by Lifeguard Ambulance Service of Florida, LLC. Since 2011, Lifeguard has been the emergency ambulance service provider for Columbia County. Lifeguard has approximately 60 employees staged throughout Columbia County. For purposes of this formal written protest and all subsequent proceedings, Lifeguard’s address of record is that of undersigned counsel.

- 3) Name and title of person submitting the protest

Attached please find an authorization from Lifeguard for undersigned counsel to file this formal written protest on its behalf.

4) Background

Relevant to the issues raised by this formal written protest is the prior solicitation for countywide ambulance service issued by the County through RFP#2016-A. Both Lifeguard and Century submitted proposals in response to RFP #2016-A. When it was revealed that Century's proposal failed to include mileage rates for its services and failed to disclose relevant litigation and regulatory action as required by the specification documents, Lifeguard protested the consideration of Century as a responsive bidder. After the Columbia County Board of County Commissioners rejected its protest, Lifeguard filed a Petition for Writ of Certiorari in circuit court for review of the County's decision as directed by section 304.8.6 of the *Purchasing Policies and Procedures of Columbia County*. The Petition for Writ of Certiorari was filed on May 2, 2016, and a hearing on the merits of the Petition is set for August 18, 2016. A potential result of the circuit court proceeding (and a specific remedy being sought) is that Century be declared a non-responsive bidder and the contract for countywide ambulance services solicited by RFP#2016-A be awarded to Lifeguard.

While Lifeguard's appeal of the County's decision regarding RFP#2016-A was pending in circuit court, the Board of County Commissioners revisited the matter at one of its regularly scheduled meetings. On June 2, 2016, the Board voted to reject all proposals submitted in response to RFP#2016-A. The Board also directed staff to revise the specifications for countywide ambulance services and issue a new solicitation with the stated purpose of removing perceived subjectivity from the rating criteria. On June 24, 2016, Columbia County issued RFP#2016-M. The solicitation is not materially different from RFP#2016-A except to the extent, as described below, it reshuffles points awarded for subjective criteria in favor of Century's bid.

5) Disputed material facts and conclusions of law

The disputed material facts and conclusions of law that serve as the basis for the protest of the intended award to Century are as follows:

- a. The County was without authority to re-solicit proposals for countywide ambulance service until the litigation related to the prior solicitation, RFP #2016-A, was resolved.

Once Lifeguard appealed the County's rejection of its protest to RFP#2016-A, the County lacked the legal authority to take further action on the solicitation such as rejecting all bids. There is well-settled legal precedent in Florida establishing that a petition for writ of certiorari amounts to an appeal of a local government decision and divests the locality of jurisdiction to take further action. *See Stale v. Menenses*, 392 So. 2d 905 (Ha. 1981). County policy also contemplates a stay of all activity related to a challenged solicitation until the protest is resolved by providing:

Upon receipt of the protest notice, the Purchasing Director will suspend the process or award of the bid until the protest is resolved unless circumstances require the award of the bid to protect the health, safety, and welfare of Columbia County.

Section 304.8.5, *Purchasing Policies and Procedures of Columbia County*. In the case of RFP#2016-A, Lifeguard's protest will not be resolved until after the conclusion of the legal proceedings currently pending in circuit court. RFP#2016-M should not have been issued until the pending litigation was resolved.

- b. The specifications are contrary to competition, arbitrary or capricious.

The specifications for competitive procurements in Florida cannot demonstrate a preference for a particular vendor or use a scoring system designed to ensure a particular outcome. It is also impermissible for specifications to be so vague as to render any subsequent scoring arbitrary or capricious. The specifications should be written with sufficient specificity, and the criteria for evaluation should be grounded in logic and reason so as to not be deemed arbitrary or capricious. In the case of RFP#2016-M, the specifications were deficient in at least the following ways:

- Most of the scoring criteria have no objective scoring metrics in place to measure what would make one proposal more desirable than another. Specifically, quality of insurance networks, qualifications and abilities of personnel, company's experience with scope of services for RFP, ability to provide desired level of and quality of service, and client references for similar projects are subjective criteria for which no additional guidance was provided to evaluators through RFP#2016-M. Without sufficient specificity, the specifications are inherently arbitrary or capricious. The same issue with lack of specificity was identified by legal counsel for the County as problematic in the first solicitation for countywide ambulance service, yet the re-solicitation did not rectify the inherent legal issues presented by subjective criteria utilizing words such as "quality" with no objective measurement tools.
- "Quality of insurance networks" was given a four-fold increase in importance in the second solicitation despite the fact that network participation has been irrelevant for emergency services since 2010 when third-party payment became mandatory for emergency services, regardless of provider network status. Further, as articulated in Lifeguard's proposal, historically only 16.56% of emergency service calls in Columbia County involve the third-party payors listed in Century's proposal.¹ The County's decision to make quality of insurance networks 20% of the overall score is not based in logic or reason.
- "Accreditation" was made the least important criterion despite direction from the Board of County Commissioners to have the second solicitation focus on quality of services, including the input of the medical director in development of the specifications. Accreditation objectively demonstrates that organizational systems are in place to ensure continuous quality assessment and improvement. Additionally, achieving accreditation demonstrates, by way of independent review, that an organization is adhering to the highest quality and performance standards in the industry. The decision to make accreditation the least important criteria is illogical.
- The apparent failure of the County to involve a medical director in development in the specifications for the second solicitation despite clear direction from the Board of County Commissioners to do so is not logical.

The specification defects in RFP#2016-M warrant the rejection of all proposals.

¹ Each of the solicitations included sample contracts that required the successful vendor to become an in-network provider with certain insurance networks within six months of the execution of the agreement. Interestingly, the sample contract attached to RFP#2016-M was amended such that the list of required network contracts was identical to the list of in-network insurance providers identified in Century's initial proposal.

- c. The County's evaluation of the proposals was fundamentally flawed, rendering the proposed contract award arbitrary, capricious, contrary to competition, and contrary to law.

Based on Lifeguard's review of documents obtained to date relating to the evaluation of the proposals, the County's evaluation team evaluated and scored the proposals inconsistently and incorrectly, both individually and as compared to one another. The inconsistent scoring highlights the subjective nature of the procurement and the absence of a consistent understanding among evaluators as to how to score each submission. Assuming *arguendo* that there was any authority for the County to proceed with another solicitation for countywide ambulance service during the pendency of a legal challenge to the prior solicitation, the County's flawed evaluation renders the proposed award arbitrary or capricious and therefore contrary to law. The nature and extent of the scoring errors and evaluation inconsistencies will necessarily become better and more specifically known through opportunity to interview or cross-examine the evaluators. To date, Lifeguard has identified the following errors and inconsistencies:

- i. Quality of Insurance Networks

The evaluation team scoring of the quality of insurance networks criterion is not supported by logic or the facts as demonstrated by the proposals. Two of the evaluators scored Lifeguard's proposal with a "zero" in the category related to quality of insurance networks despite the fact that Lifeguard's proposal identified insurance networks with which it was affiliated. Two evaluators scored Century and Excelsior Ambulance Service equally despite the fact that Excelsior listed more than 200 private insurers with which it had an affiliation and Century listed just 5. The arbitrary scoring of the quality of insurance networks criterion affected the ultimate recommendation to award the contract to Century and therefore justifies a rejection of all proposals.

- ii. Qualifications and Abilities of Personnel

In its proposal, Century significantly overstated the experience and success of its personnel designated to lead its Columbia County operations. The evaluation team failed to investigate the claims in Century's proposal. Instead, it is clear the evaluators simply relied on this overstated information when scoring the Century proposal. One evaluator actually scored the Century proposal 5 points higher than Lifeguard's in the Personnel category despite a proven track record of management and operation of a 911 response service in Columbia County by Lifeguard personnel.

- iii. Company's Experience with Scope of Services for RFP

Lifeguard currently provides emergency ambulance services in Columbia County; Century is a transport ambulance service and stand-by emergency service provider. More importantly, Lifeguard has experience managing a 911 emergency service. Century has no demonstrated experience managing a 911 service. In its proposal, Century notes that it "provided Level Zero assistance on hundreds of occasions." While it may be true that Century was put on notice that its services may be required when all Lifeguard ambulances were handling 911 calls, there is a significant difference between being told to be ready to provide emergency services and actually providing them. The representations in Century's proposal regarding the extent of its experience managing or actually providing emergency services are significantly overstated. The evaluation team failed to recognize or investigate Century's overstated claims as demonstrated by the evaluation

sheets. One evaluator scored the proposals evenly and the other evaluator inexplicably scored Century significantly higher than Lifeguard in the area of experience despite Century's proposal being devoid of any management experience. The scores related to experience are not grounded in logic or reason.

iv. Ability to Provide Desired Level of and Quality of Service

While the criterion related to ability to provide desired level of and quality of service does not have accompanying objective metrics for measurement, it seems logical that experience, personnel, and equipment would factor into a company's ability to provide emergency ambulance services. As noted above, Century has no proven ability to manage a 911 service; only Lifeguard's proposal demonstrated management experience. Further, Lifeguard proposed to dedicate 5 ambulances and 2 paramedic support SUVs to serve the residents of Columbia County. Contrastingly, Century proposed dedicating just 4 ambulances with no paramedic support SUVs to meet the County's needs. Inexplicably, two evaluators scored the proposals virtually evenly and the other evaluator scored the Century proposal as significantly more desirable despite the fact that Century proposes having less than 80% of the dedicated assets available to serve Columbia County than Lifeguard proposed. Again, the scoring is not based in logic or reason.

v. Client references for similar projects

RFP#2016-M solicited proposals for the management and full-time operation of the County's 911 response services. Importantly, Century has no demonstrated experience with management or full-time operation of a 911 service. Each reference letter submitted by Century as part of its proposal focuses on Century's role as a stand-by service provider, not the manager and full-time operator of an emergency response service. Despite that fact, one of the evaluators scored the Lifeguard and Century proposals evenly with regard to client references for similar projects, and the other two evaluators inexplicably scored Century higher than Lifeguard. The confusion of the evaluators regarding how to score the reference letters is evidenced by one evaluator giving twice the number of points for an in-state evaluation as opposed to an evaluation from out of state. There were no objective means by which to measure the reference letters, and the scoring of the evaluators reflects that void. The scoring of the reference letters is based on neither logic nor reason.

For the foregoing reasons, the County's evaluation was arbitrary or capricious. The inexplicable disparities in the evaluation sheets make clear that the scoring criteria lacked sufficient definition. The scoring completed by the Evaluation Committee members reflects a subjective randomness that is prohibited by Florida law.

d. Rejection of all proposals submitted in response to RFP #2016-M would be in the best interest of Columbia County and its residents.

Public policy considerations favor rejecting all proposals submitted in response to RFP#2016-M. Allowing the litigation related to RFP#2016-A to resolve would promote several legitimate public policy considerations such as avoiding conflicting decisions (entering into a contract with Century in August only to have the circuit court award the contract for the same services to Lifeguard in September), protecting the public treasury from duplicated or unnecessary expenses, and conducting the business of government in an orderly manner.

Finally, rejection of the proposals submitted in response to RFP#2016-M may benefit the residents of Columbia County. In its response to RFP#2016-M, Century proposed a significant increase in mileage costs to patients in need of services when compared with its submission to the first solicitation. In response to the first solicitation, Century proposed a sliding mileage rate with trips less than 17 miles being billed at \$10.97 per mile and trips greater than 17 miles being billed at \$7.31 per mile. In its second proposal just months later, Century proposed a flat rate of \$15 per mile, which represents a 37% to 105% price increase between the two nearly contemporaneous proposals depending on the length of the trip. Conveniently, Century's price proposal in the second solicitation remains slightly better than Lifeguard's price proposal, which remained unchanged between the two solicitations. RFP #2016-M violates many of the well-settled principles that are the basis of procurement law in Florida such as a level playing field for bidders and securing services at the lowest possible price. See Harry Pepper & Assocs., Inc. v. City of Cape Coral, 352 So. 2d 1190 (Fla. 2d DCA 1977).

Importantly, if the County prevails in the litigation related to the first solicitation, it would be entitled to move forward with the proposed contract award to Century based on the terms submitted by Century in response to the first solicitation. As noted above, Century's mileage price terms in response to the first solicitation were much more favorable for County residents than those submitted in response to RFP#2016-M. In fact, based upon the number of billed miles and trip length documented in the lifeguard billing system for calendar year 2015, if the County were to execute a contract with Century based on its first price terms, the estimated annual mileage charges billed to Columbia County residents would be \$533,370. If the County executes a contract with Century based upon the second set of price terms submitted, the estimated annual mileage charges billed to Columbia County residents would be \$889,900. Lifeguard urges the County to reject all proposals submitted in response to the second solicitation and await the results of the pending litigation matter. If nothing else, it would present an opportunity to execute a contract with an estimated annual cost savings of \$356,530 for the residents of Columbia County.

- 6) Facts, rules, regulations, statutes, and constitutional provisions entitling Lifeguard to relief

Lifeguard is entitled to relief pursuant to the *Purchasing Policies and Procedures of Columbia County*, the requirements of the RFP, together with established decisional law of Florida courts, because, as detailed above, the County's recommended award of the contract to Century is (a) contrary to the County's policies and/or the RFP specifications; and (b) contrary to competition, arbitrary, and capricious.

- 7) Relief requested

Lifeguard respectfully requests:

A. That the Purchasing Director of Columbia County determine that the proposed contract award to Century Ambulance Service, Inc. is contrary to the *Purchasing Policies and Procedures of Columbia County*, contrary to competition, arbitrary or capricious, and otherwise contrary to the law; and

B. That the Purchasing Director of Columbia County reject all proposals submitted in response to RFP#2016-M.

Respectfully submitted,



Douglas M. Smith
Jennifer A. Tschetter

cc: Joel Foreman, Columbia County Attorney
Meath R. Stokley, Nabors, Giblin & Nickerson, P.A.
Ellen Harmon, Associate General Counsel, Lifeguard Ambulance
Tania Rogers, Sr. Director of Compliance, Lifeguard Ambulance



July 22, 2016

To Whom It May Concern,

Lifeguard Ambulance Service of Florida, LLC has retained Hopping Green & Sams, P.A. to assist with its evaluation and protest of Columbia County RFP#2016-M. Hopping Green & Sams, P.A. is authorized to file a formal written protest to the intended award of a contract to Century Ambulance Service, Inc. based on its proposal submitted in response to RFP#2016-M. If you have any questions or need additional clarification, please advise.

Kind regards,

A handwritten signature in black ink, appearing to read "Brett Jovanovich", is written over a faint, larger version of the signature.

Brett Jovanovich

President

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