

Resolution

UPHOLD PROTEST DENIAL REGARDING BUS ADVERTISING SERVICES

WHEREAS, the Ann Arbor Transportation Authority (AATA) issued a public Request for Proposals from prospective vendors to provide bus advertising services, and

WHEREAS, Transit Advertising Group, Ann Arbor (TAG-AA) issued a proposal, and

WHEREAS, at the conclusion of a thorough evaluation process TAG-AA was not selected to receive the contract for advertising services and the AATA Board of Directors (Board) authorized award of a contract to CBS Outdoor Group, Inc., and

WHEREAS, TAG-AA subsequently exercised its right under the terms of the Request for Proposals to file a protest against the Board's decision with the AATA Chief Executive Officer (CEO), and

WHEREAS, the CEO reviewed the protest documentation and denied the protest based on information included in the attached letter to TAG-AA, and

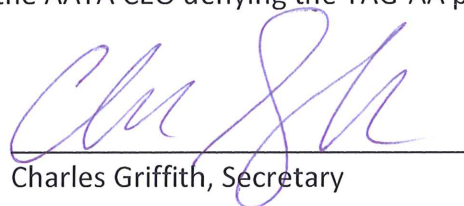
WHEREAS, the protest included an automatic appeal to the Board, if its protest was denied by the CEO, and

WHEREAS, the Board was provided with and considered the TAG-AA protest documentation,

NOW, THEREFORE, BE IT RESOLVED that upon consideration of the relevant information the Board of Directors hereby upholds the decision of the AATA CEO denying the TAG-AA protest.

  
\_\_\_\_\_  
Jesse Bernstein, Chair

September 5, 2012

  
\_\_\_\_\_  
Charles Griffith, Secretary

September 5, 2012



Ann Arbor Transportation Authority  
2700 South Industrial Highway  
Ann Arbor, Michigan 48104  
734-973-6500 734-973-6338 F  
theride.org

August 31, 2012

Mr. Randy Oram  
President  
Transit Advertising Group AA, LLC  
28423 Orchard Lake Road, Suite 210  
Farmington Hills, MI 48334

Dear Mr. Oram:

I am in receipt of your Protest after Award for AATA Request for Proposal (RFP) 2012-11 for Bus Advertising Services.

I have reviewed the procurement files and spoken with Michelle Sanders of our Purchasing Department about each concern detailed in your Protest. My finding to each point is presented below by order in which they appeared in your Protest. For organizational purposes, text from your Protest appears in bold; text quoted from the RFP or AATA Procurement Manual appears in italics.

**THE GROUNDS FOR THIS PROTEST ARE:**

- A) The successful Proposer submitted a nonresponsive proposal, and**
- B) The state Evaluation Criteria as set forth in Section 3.9.C of the RFP were not observed.**

**TAG AA believes that, overall, the RFP specification and requirements were not realistic in terms of actual operation of the Bus Advertising Serviced contract.**

Section 3.2 of the RFP states:

*B. At any time during this procurement up to the time specified, Offeror's may request in writing, a clarification or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the RFP. Requests may include suggested substitutes for specified items and for any brand names. Such written requests shall be made to the Contracting Officer. The Offeror making the request shall be responsible for its proper delivery to AATA. AATA will not respond to oral. Any request for a change to any requirement of the contract documents must be fully supported with technical data, test results, or other pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be provided by the AATA in the form of addenda*

*only. Only written responses provided as addenda shall be official and no other forms of communication with any officer, employee or agent of the AATA shall be binding on AATA.*

*C. The Offeror's Request for Clarifications must be received by Tuesday, May 1, 2012 at 12:00 p.m.*

*D. If it should appear to a prospective Offeror that the Scope of Services, is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts thereof or with any federal, state, local law, ordinance, rule, regulation, or other standard or requirement, the Offeror shall submit a written request for clarification to the AATA within the time period specified.*

In accordance with the RFP which was issued April 23, 2012, TAG AA (and all potential Proposers) had until May 1, 2012 at 12:00 p.m. to submit concerns, questions, requests for clarifications including as stated in the sections above any request for a change in RFP specifications. TAG AA did not submit any communication within this time period nor any time prior to the June 5, 2012 proposal deadline.

TAG AA did include numerous deviations and exceptions with its proposal. In its' protest, TAG AA states: **"TAG AA was aware of, and acknowledged, realistic capabilities of the vendor/contractor in performing and operating the contract. TAG AA affirmatively stated their realistic expectation in operating the contract as exceptions and deviations (Exhibit B). Any other proposer of the contract should have the same exception and deviations."**

TAG AA did not submit any communication, let alone a request to edit or change the RFP specifications at any time during the RFP process. This includes any questions or requests for clarifications by the May 1, 2012 at 12:00 p.m. or prior to the RFP proposal deadline of June 5, 2012 at 2:00 p.m. TAG AA first communicated any disagreement it had with the RFP specifications within their submitted proposal. Had TAG AA communicated its objections of the RFP specifications to AATA, those objections and AATA's response would have been shared with all potential proposers prior to the RFP proposal deadline. All potential proposers would then have the same information TAG AA felt all potential proposers needed to bid on the same specifications.

TAG AA had ample opportunity to share questions, requests for clarifications and requests for changes to the RFP prior to RFP proposal deadline and failed to make any communication to AATA during this time. Therefore, AATA did not have the opportunity to entertain any changes TAG AA would propose, to make decisions on changes requested and to share any changes to all potential proposers. While AATA remains satisfied with the RFP specifications and may not have necessarily made the changes TAG AA would have suggested, AATA would have shared TAG AA's suggestions with all potential proposers making them aware of the issues as TAG AA identified them.

TAG AA made their inability to meet the specifications of the RFP known in its proposal. That other proposers do not suffer from the same limitations as TAG AA, does not mean that these other proposers are unrealistic in their ability to meet the specifications as included in the RFP.



Not all proposers have identical sets of skills, talent, experience and influence. The fact that one proposer is unable to meet the requirements of the specifications does not mean that all proposers are unable to meet the same requirements.

#### **A. The Successful Proposer Submitted a Nonresponsive Proposal**

##### **Non-Response to “Proposed Staffing Requirements**

**That the listed key personnel will be employed by the vendor or contracted by the vendor and will be assigned to the project in the manner prescribed. The key personnel identified as being essential to the project will not be removed from the project without written approval from AATA.**

AATA approves the removal of Mr. Hawkins from the project team and will provide appropriate written communication.

**The Awardee’s proposal did not contain the required certification.**

The RFP did not require any particular professional certification whether by the firm or personnel.

**The Awardee’s proposal does not indicate the name individual’s availability for the AATA project, nor does it indicate their anticipated work load, as required by the RFP specifications. There was no certification that listed key personnel would be employed by the Awardee in the manner prescribed.**

The Awardee did address to AATA’s satisfaction the personnel that would be working on any contract resulting from the RFP. Resumes for key personnel were included with the Awardees’ proposal. Though the RFP did not specify a preference for local personnel, the Awardee included information regarding its national as well as local personnel in its proposal. The Awardee has more than 60 CBS Outdoor employees working in Southeast Michigan. AATA finds this level of staffing to be more than adequate.

The Awardee’s proposal does not state that New York based employees would not have role in the contract resulting from the RFP. AATA finds that locally-based employees are qualified to work on the contract resulting from the RFP.

##### **Non-response to Requirement to State Exceptions and Deviations**

**Section 3.6.F of the RFP requires that “Proposers shall state any exceptions to or deviations from the requirements of the RFP. Where Offeror wishes to propose alternative approaches to meeting AATA’s requirements, these should be thoroughly explained.**

Not all proposers had exceptions or deviations to their proposals. Without including exceptions and deviations, these proposers are proposing to meet the requirements of the RFP and enter into a contract resulting from the RFP.

TAG AA did have exceptions and deviations that were stated in its proposal. This is an indication that TAG AA is therefore unable or unwilling to meet the stated requirements of the RFP and any contract resulting from it.

**Section 2.11 REVIEW OF ADVERTISING CONTENT provides that “before displaying any advertising, the Contractor shall first submit the material to AATA for review. AATA’s review will be for content only, but shall reserve the right, in its sole discretion, to remove any advertisement it deems objectionable. Reasonable proof or clarification of statement contained in any advertisement may be required by AATA as a condition of use or continued use of advertising space.**

AATA does not agree with TAG AA’s assessment that the Awardee will disregard or fail to include AATA in development of advertisement content. Indeed, the Awardee states in its proposal “At CBS Outdoor we continuously work with our clients to ensure compliance with the advertising policies of the transit agencies we work for.” In addition, the Awardee has signed their proposal without exception or deviation to demonstrate their willingness and ability to meet the requirements of the RFP and resulting contract.

**B. Stated Evaluation Criteria as set Forth in Section 3.9.C of the RFP was not Observed.**

**The Awardee’s proposal indicated nothing about material application, removal or maintenance other than that the actual application will be sub-contracted out to another firm.**

The Awardee has indicated in their RFP that it will subcontract with J Perez Associates for “all aspects of our transit advertising operations”. This has been confirmed by the Awardee during subsequent conversation.

**There is an implication that the local sales office will be located in their existing Detroit offices...but nothing specific to the local Ann Arbor/Washtenaw County areas.**

The RFP did require proposers to have a local sales office. The Awardee does have an office in Detroit which meets AATA’s requirement. Likewise, TAG AA’s office is located in Farmington Hills, a location that has met AATA’s requirements.

In reviewing each concern outlined in TAG AA’s Protest, I find the following:

- AATA’s policies and procurement procedures have been adhered to
- the RFP specifications are realistic and reflective of the services for which AATA is contracting
- the requirements of the RFP have been met by the Awardee
- the Awardee is willing and able to meet the requirements of the RFP and resulting award
- TAG AA, by virtue of its proposal, is either unwilling or unable to meet the requirements stated in the RFP and resulting award

In addition, Section 4.4.C of the RFP states *“Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described in this section. Subject to AATA’s right to reject any or all proposals, the Offeror will be selected whose proposal is found to be most advantageous to AATA, based on consideration of the criteria.”*

AATA has selected the proposer that offers the most advantageous value to AATA.

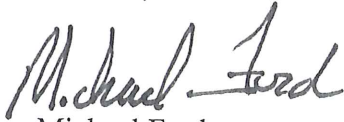
Further, as indicated in the same section of the RFP *“Any individual or entity may file a protest with AATA alleging a violation of applicable federal, state law and/or AATA policy or procedure relative to seeking, evaluating and/or intent to award a procurement contract.”*

AATA has not violated any applicable federal, state law and/or AATA policy or procedure by awarding this contract to CBS.

I appreciate that TAG AA is disappointed to have its contracting relationship with AATA come to a close and I sincerely hope that this communication dispels any concern that TAG AA may have regarding the validity of AATA’s procurement process and choice of Awardee.

I wish you the best in your future endeavors.

Sincerely,

A handwritten signature in black ink that reads "Michael Ford". The signature is written in a cursive, flowing style.

Michael Ford  
Chief Executive Officer