

**BEFORE THE BIDDING REVIEW BOARD
OF THE CITY AND BOROUGH OF JUNEAU**

In re:

Snowcloud Services LLC, Protestor.

Protest of: Provision of Internet Services
in the Juneau Maritime Industrial Zone,
RFP No. 25-190.

RECOMMENDATION TO GRANT PROTEST

I. Procedural History

On December 30, 2024, the City and Borough of Juneau ("CBJ") Purchasing Division posted Notice of Successful Proposer for the Provision of Internet Services for the CBJ Juneau Maritime Industrial Zone ("Project"), showing North River IT Services Co. ("NRIT") to be the apparent successful proposer and Snowcloud Services LLC (SCS) ranked second. SCS filed a timely written protest with the CBJ Purchasing Officer ("PO") pursuant to CBJ 53.50.062. The PO denied the protest on January 21, 2025, and SCS requested review by the CBJ Bid Review Board ("BRB"). A hearing on the protest was held February 19, 2025. SCS¹ and the PO² participated in the hearing. The BRB deliberated in closed session on the afternoon of the hearing. By unanimous vote, the BRB has adopted this recommendation and the findings of fact and conclusions of law that support it.

II. Issue

Whether the PO erred by denying SCS's protest and upholding the determination that NRIT's proposal was responsive and responsible.

III. Summary Recommendation

The BRB recommends that SCS's protest be granted and that NRIT's bid be rejected pursuant to CBJC 53.50.062(m)(1)(b). Less formally it is suggested that the PO either consider the second-place

¹ Mark Luchini and Chris Ruschmann spoke on behalf of SCS.

² PO Renee Loree and IT Director Chris Murray spoke on behalf of the PO.

proposer or cancel the RFP. The BRB believes NRIT's proposal failed to address the necessary electrician requirements, failed to address the complexities and challenges of the job, and their proposal, including "if" statements, was nonresponsive to the request.

IV. Standard of Review

The City and Borough of Juneau ("CBJ") bid protest procedures are set out in CBJ 53.50.061-.080. The BRB is tasked with conducting fair and informal bid protest hearings and issuing recommendations that contain findings of fact and conclusions of law, based on "the provisions of [CBJ] Code interpreted in light of applicable state case law and generally accepted principles of government purchasing as set forth in standard treatises, decisions of the United States Comptroller General and similar authorities." CBJC 53.50.062(k) and (l). The protester has the burden of proof to persuade the BRB that the PO's response to the protest was erroneous. BRB Hearing Procedure ¶ 4.

V. Analysis of Evidence, Findings of Fact, and Conclusions of Law

The BRB has carefully considered the parties' presentations and the submitted evidence in this matter, including SCS's written protest and letter to the BRB, the PO's response to the protest, the Posting Notice of Successful Proposers and Evaluation Summary, the Request for Proposal No. 25-190, including Addendums 1-4, the proposal responses submitted by Alaska Communications (ACS), Boldyn Networks (Boldyn), ICE Services, NRIT, and SCS, and the score sheets completed by the evaluators.

Under CBJ's procurement code a contract for professional services of over \$50,000 must be awarded to a responsive and responsible offeror whose proposal is determined to be most advantageous to CBJ. CBJC 53.50.050(c)(3). A responsive proposer is one whose proposal conforms to the RFP in all material, procedural, and substantive aspects.³ A responsible bidder is one who proves they have the financial capacity and expertise to carry out the work.⁴ These definitions are nearly identical to those used in CBJ Purchasing's

³ 70 AMJUR POF 3d 97 §2.

⁴ 185 AMJUR POF 3d 161 §44.

“Attachment A, General Terms and Conditions”.⁵

BRB found NRIT’s proposal lacking in several areas. NRIT dismissed the challenges on this project altogether. One such challenge they failed to address is the requirement that licensed electricians work on electrical work covered by the National Electric Code. *See* 12 AAC 32.075 and AS 08.40. NRIT failed to identify what subcontractor would be doing that work. LinkUp Alaska, one of NRIT’s subcontractors, do not identify themselves as licensed electricians licensed to complete work under the National Electric Code, and therefore are not qualified to do the work.

NRIT proposes to tap into “respective light poles” but do not identify who owns the light poles or what obstacles there are to accessing them.⁶ The light poles in this area belong to ADOT, CBJ, or CBJ Docks & Harbors. Each of these proposed locations have different permitting processes, electrical configurations, and most likely different structural capacities that may, or may not, preclude their use for NRIT’s intended purposes. These can result in delays, system redesign, and increased costs if not accounted for in their project. NRIT’s one acknowledgement of needed electrical connectivity is a cut sheet of a Solis component that may (with permit approval and required electrical and structural analysis) plug into one variety of light poles, but certainly not others proposed by NRIT. Other light poles identified by NRIT need electrical circuitry to power their systems (i.e., ACS’s proposal). Other challenges NRIT failed to address is that ACS will need to run new lines, and the weather impacts to both installation and infrastructure. The failure to address these issues is misleading and non-responsive to the RFP.

As a comparison, ICE’s proposal provided a detailed understanding of the RFP in their proposal. ICE explained their current (nonexistent) backbone, laid out the challenges inherent in the project, and included the structural analysis necessary for this project. They provided acknowledgment that the rain in Juneau can cause the equipment to not function without direct line of sight and they addressed how they overcame that

⁵ See BRB Agenda Packet, p. 392.

⁶ BRB Agenda Packet, p. 239.

challenge in the design. SCS's proposal addressed their existing infrastructure and how they will access buildings for installing additional infrastructure.

NRIT's proposal has a lot of "if" statements. For example, "[t]he design relies on...", "[w]ith agreement from..." "[i]t is believed...".⁷ If the assumptions that accompany these "if" statements are incorrect then it will lead to extra costs and time. To be responsive to the RFP, NRIT should have investigated their assumptions, discovered the answers, and addressed the realities in their proposal, as other proposers did.

BRB notes that NRIT is outsourcing much of their work to other companies. This indicates they are not themselves experienced and qualified in providing this type of professional internet service. This is evidenced by their experience and qualifications section. The projects are primarily installing equipment rather than providing the required service. One of the example projects involved two of the companies they are working with, Cambium Networks and Frontera, but NRIT is not listed as participating in that project.⁸ NRIT indicates that they are using ACS as a provider and marked where ACS comes into the MIZ. NRIT will operate out of city hall according to their proposal. They fail to address how they will fix the equipment after hours if the equipment is inside the secured city hall. Their use of CBJ's firewall and ACS is nonresponsive to the RFP requirements.

Competitive bidding exists to further the public benefit and to protect taxpayers by ensuring the responsible use of public funds.⁹ To that end, the RFP must be accurate, complete, and "not so defective" in form or content as to exclude competition, to make the advertisement insufficient for bidders to accurately or timely respond to, and then to allow a bid to be awarded thereupon.¹⁰

The RFP itself in this case may have led to some of the failures by NRIT in their proposal. The

⁷ NRIT Proposal, Understanding & Methodology Section, p. 6; BRB Agenda Packet, p. 238.

⁸ NRIT Proposal, Experience & Qualifications Section, p.14; BRB Agenda Packet, p.246.

⁹ *McBirney & Associates v. State*, 753 P.2d 1132, 1136 (Alaska 1988).

¹⁰ 70 AMJUR POF 3d 97 §3.

pricing structure is confusing, and this is exhibited by the responses received. The protestor did a good job showing the differences in the pricing structures in their summary of the five-year estimates, which highlights that the companies are not all on the same page.¹¹ The table shows how each company priced their proposals to account for the infrastructure installation with the bulk of the costs being up front in the first year. If the companies were successful in continuing the contract throughout the potential five-year term, they included the cost to maintain the infrastructure and provide the service in the following years. This is converse to NRIT's proposal which inexplicably carries their costs over the five-year term. This results in the initial year being less than any other company, however NRIT's total five-year cost as proposed is more than double that of SCS. NRIT's five-year cost is approximately \$4 million versus SCS's at \$1.7 million. The next highest proposal is Boldyn at \$2.5 million. This gives a strong impression of manipulating the system by lowering the costs at the front end to gain an advantage over their competitors and secure the contract. The result is far greater cost to the CBJ beyond one year which is not in the taxpayers' best interests and is not "the most advantageous" proposal to the City and Borough, as required by CBJC 53.50.050(c)(3).

BRB is also concerned with the lack of transparency in the RFP regarding the funding of this project. Chris Murrey testified that companies had to do their own research on the funding source so they would know the amount available from the Marine Passenger Fees. The BRB finds this concerning in a public process. Rather than hide the available funding, the RFP should provide where the funding is coming from, how much is available, any restrictions on that funding, and what challenges there will be to continue funding in future years. Making the process more transparent would provide for more responsive proposals. The RFP could include a cost proposal that considers the entire potential cost of the project over five years to ensure apples-to-apples comparison of costs or ask for annualized costs to account for the possibility that funding does not continue.

While this contract is advertised as a service contract the BRB finds this project is a combination of

¹¹ See BRB Agenda Packet, p. 409.

construction and service contract given the work necessary to install equipment as well as provide the service. The specific and varied skills required for this project suggest that at least one evaluator should have engineering experience or at least understand the technical complexities of a public wi-fi project.

As established in Alaska law, competitive bidding exists to further the public benefit and to protect taxpayers by ensuring the responsible use of public funds.¹² The competitive bid system is not for the benefit of other bidders, and its requirements must be construed with the purpose of best advancing the public interest.¹³ It is well established that a court's determination of whether a bid is responsive is, first whether the bid varies in some material way from the advertised specifications, and, second, whether that variance gives a bidder a substantial advantage or benefit over the other bidders on the project.¹⁴ While the PO has the authority to waive minor proposal defects that result in no injustice or prejudice to the bidders as a group, if a proposal varies in a material way from the advertised specifications, and that variance gives a bidder a substantial advantage or benefit over other bidders on the project courts have been known to overturn the agencies action.¹⁵

The protestor has proven that the defects in NRIT's proposal are not minor. The failure by NRIT to address the complex challenges of this project as requested by the RFP, including electrical requirements, and sufficient experience and qualifications made their proposal nonresponsive to the RFP requirements. NRIT's divergent pricing structure gave them a distinct advantage over other bidders while at the same time penalizing taxpayers. The BRB acknowledges that the very things that made the NRIT's proposal unresponsive should have resulted in it receiving a lower score than the other bidders. The PO may want to consider reissuing the RFP and ensuring all evaluators are well versed in the necessary requirements of the project.

¹² McBirney & Associates v. State, 753 P.2d 1132, 1136 (Alaska 1988).

¹³ Id.

¹⁴ Am. Jur. 2d, Public Works and Contracts § 58. See Laidlaw Transit, Inc. v. Anchorage School District, 118 P.3d 1018, 1032 (Alaska 2005).

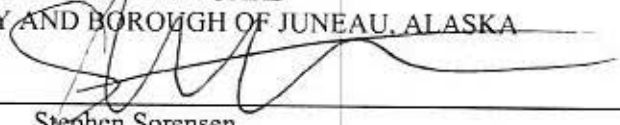
¹⁵ See 70 AMJUR POF 3d 97.

VI. Conclusion

The BRB finds the PO acted unreasonably in determining NRIT's bid was responsive. It further finds that the RFP was lacking in clarity and information. It recommends that SCS's protest be granted, that NRIT's proposal be rejected as nonresponsive under CBJC 53.50.062(m)(1)(b).

DATED this 5th day of March, 2025.

BIDDING REVIEW BOARD
CITY AND BOROUGH OF JUNEAU, ALASKA


By: Stephen Sorensen
Chair/Presiding Officer