

APPEAL TO MILWAUKEE COUNTY  
BOARD OF SUPERVISORS  
STANDING COMMITTEE ON HUMAN NEEDS  
ADMINISTRATIVE DETERMINATION REVIEW COMMITTEE

POSITION STATEMENT OF PROPOSER SOCIAL DEVELOPMENT COMMISSION

The Community Relations - Social Development Commission in Milwaukee County (“SDC”) appeals from the initial review by the Milwaukee County Department of Health and Human Services (the “Department”) upholding the April 29, 2015 Notice of Intent to Award Contract regarding its Year 2015 Request for Proposal, #82110001 (the “RFP”) soliciting proposers to be awarded contracts as providers under the Wisconsin Home Energy Assistance Program (“WHEAP”).

**INTRODUCTION AND BACKGROUND:**

The Department issued the RFP on February 13, 2015, and directed that responses be submitted not later than March 27, 2015. Under the RFP, the area to be serviced in Milwaukee County is divided into six geographic zones, numbered Zone 1 through Zone 6, each to have its own funding contract. Responding proposers could apply for the contracts for any or all of these six zones. The RFP provides that the proposals, as submitted, were to be reviewed and scored by a team of evaluators following very specific rules and criteria set forth in the RFP. Each proposer was to be scored in each zone that it applied for in the following seven areas of concern or “divisions”, each division being given the percentage of weight indicated below :

- Administrative ability - 12%;
- Budget justification - 13%
- Cultural diversity and cultural competence - 9%;
- Previous experience - 13%;
- Outcomes and quality assurance - 13%;
- Service plan and delivery - 28%; and
- Staffing plan - 12 %

SDC and three other entities submitted proposals in response to the RFP. SDC applied for the contract in each of the six zones. The other three proposers were Community Advocates (“CA”), UMOS and ESI.

In its Notice of Intent, the Department announced that it has completed its scoring of the proposals submitted; and that it will award the WHEAP contracts in all six zones to CA and to UMOS, each of them being awarded three zones. The Department does not propose to award the contract for even a single zone to SDC.

CA has been a WHEAP provider at a limited level for approximately four years. UMOS has *no* prior experience of any kind as a WHEAP provider in Milwaukee County (although it has been a provider of such services in Kenosha County for several years). SDC, on the other hand, was

Milwaukee County's principal WHEAP provider for approximately 37 years commencing in 1978; and was its sole provider for most of that period. And yet the County has chosen not to award any portion of the WHEAP contracts to SDC commencing October, 2015. This decision is irrational on its face.

SDC brings this appeal pursuant to Section 110.07 of the Milwaukee County Code of General Ordinances (the "County Ordinances"). The general grounds for this appeal are that the process was flawed and the award determination was arbitrary, unreasonable and not in accordance with the Proposal Selection and Award Process, Proposal Review Process, Review and Scoring Criteria and Factors to Consider when Scoring Points, applicable to this RFP.

On the basis of the information provided in connection with this appeal, both at the hearing and in this position statement, SDC requests the Administrative Determination Review Committee (the "Review Committee") to reject all proposals and conduct a new request for proposal process. Alternatively, the Review Panel can require the Department to re-score the proposals, following the guidelines and scoring criteria applicable to the RFP and eliminating the arbitrariness and other flaws discussed in the appeal.

**STANDARD OF REVIEW:**

The County Ordinances provide that the Review Committee is to review the determinations of the Department in this matter based upon the following test:

- (1) Did the Department keep within its jurisdiction?
- (2) Did the Department act according to law?
- (3) Was the action of the Department arbitrary, oppressive, or unreasonable, representing its will and not its judgment? and
- (4) Was the evidence such that the Department might reasonably make the determination in question?

*See* County Ordinance Section 110.07.

SDC submits that the answers to questions (2), (3) and (4) are each "No", and that the Department's actions should therefore be set aside.

**ISSUES PRESENTED:**

This appeal is grounded on the following specific errors in the process by which the Department has reached its decision:

1. The RFP was deeply flawed in its design and administration;

2. The proposal submitted by CA was non-responsive and should have been rejected; and
3. The scoring of the competing proposals by the Department's evaluators is inconsistent, irrational and otherwise flawed.

An additional summary of the flaws in the RFP and its administration is set forth in a summary attached hereto. *See* Attachment I. Because the process was flawed and resulted in an arbitrary and unreasonable decision, this Review Committee should set aside the decision of the Department as requested herein.

## **DISCUSSION:**

### **(1) The RFP was deeply flawed in its design and implementation**

As issued on February 13, 2015, the RFP was already seriously flawed in its design and specifications. These flaws were compounded by additional errors in implementation through the date the Notice of Intent was issued.

(A) A fundamental flaw in the RFP is its effect of transferring WHEAP funding from areas of greater poverty in the County, namely the north side of Milwaukee, to areas of lesser poverty on Milwaukee's south side. SDC recognizes this is primarily an issue of policy. But SDC considers it appropriate to raise this matter in this appeal to provide context for its other objections below.

(B) The division of the County into six zones in the RFP is poorly designed. SDC has a specific objection to the structure of Zones 4 and 6. From prior experience, SDC is aware that residents of two of the zip codes in Zone 4, namely, 53204 and 53215, are more likely than not to seek WHEAP services at a facility in Zone 6. Under the terms of the RFP, a WHEAP provider is required to provide services to eligible applicants who present themselves at the provider's service site, no matter where the applicants reside. This created serious difficulties for SDC in shaping its budget proposals, knowing that the funding provided for Zone 6 would need to cover many more applicants than the actual population in that zone would suggest. These difficulties were greatly compounded by the Department's action on April 22, 2015, described below, specifically allocating a dollar amount to Zone 6 that is grossly inadequate to the reasonably anticipated number of applicants in that zone. As a result, SDC was required to provide in its budget for the infusion of a very large subsidy from third party sources.

(C) The RFP was seriously inadequate in specifying the requirements for the budgets to be included in responding proposals. This deficiency is reflected in the fact that not one of the proposers received anything other than a zero score from any evaluator in the categories of "Accurate, clear and detailed budget" or "Budget adequately supports program" for any zone on the official proposal scoring worksheets.

(D) On April 22, 2015, the Department's Contract Service Coordinator, Diane Gallegos, on behalf of the Department, requested proposers to submit revised budgets for their proposals to reflect revised amounts of funding allocated by the Department to each of the six geographical zones covered by the RFP. A review of the revised funding levels disclosed to SDC a very considerable variation from one zone to the other in the per capita funding allocated to them. The variations seriously disadvantaged three of the zones for which SDC was bidding. George Hinton, Chief Executive Officer of SDC, sought clarification of the reasons for such disparate treatment among the zones. The Department responded to the inquiry by stating, vaguely, that "We have assigned funding to each zone based on an analysis of historic activities and data" ; and then stated, "Otherwise, we will not be fielding any other questions regarding the RFP."

The clarification that Mr. Hinton sought was an entirely reasonable inquiry into a mystifying change in the specifications of the RFP. Prior to the change, proposers were given an aggregate available grant amount for the entire county, and directed to construct their own proposed budgets for each of the six zones – including the amount of program dollars to be allocated to each zone. By the change it implemented on April 22, the Department unilaterally allocated the available funding among the six zones, assigning a specific dollar amount to each zone. The assumptions and factual bases underlying these allocations were critical to a proposer's ability to respond with a meaningful budget for each zone. The Department's refusal to provide information about these assumptions and factual bases severely undermined SDC's efforts to construct revised budgets. Compounding the problems with budget related specifications in the RFP is the fact that the Department found it necessary to change the rules for budget submissions on April 22, 2015. This action is described in greater detail below. This change unnecessarily complicated and distorted the budget computations that SDC needed to make and submit as a revision to its RFP.

(E) The RFP in several material respects fails to comply with WHEAP Guidelines regarding hours, staffing and staffing plans. Specifically, it does not provide for the duration and flexibility of hours mandated by Section 8.2.5 of the 2015 Wisconsin Home Energy Assistance Program (WHEAP) Operations Manual (the "State Manual"), which states that a WHEAP intake program is to "Provide flexible office hours to accommodate applicants who cannot apply during normal business hours." State Manual §8.2.5 2).

(F) The Department in its administration of the RFP failed to verify representations or factual assertions in plans submitted by other proposers, including CA. As described in greater detail in Part 3 below, CA included wildly optimistic and exaggerated claims of the numbers of clients it expects to serve with the available funds for WHEAP services. There is no evidence that the Department or its evaluators took any action to assess the reasonableness of these claims.

(G) To the best of SDC's knowledge, both the restructuring of the services model for WHEAP in Milwaukee County and the design of the RFP took place without any input by the public and without any hearings or public review of any kind. None of the current or prospective WHEAP providers were consulted during the process. It is beyond comprehension that this should be the case, and no doubt explains in large measure why the resulting process was so flawed.

2. **The proposal submitted by CA was non-responsive and should have been rejected because: (A) It failed to include, at the time it was submitted, information expressly required to be included by the RFP; (B) CA’s budget proposal was unrealistically low and out of line with its own history; and (C) CA’s proposal does not satisfy the program staffing requirements specified in the State Manual.**

(A) On March 31, 2015, four days after the deadline for submitting proposals, the Department’s Contract Service Coordinator, Diane Gallegos, contacted Andrea Mallman-Elliott, the chief executive of CA, by email about the proposal submitted by CA. Ms. Gallegos informed Ms. Mallman-Elliott that CA had failed to include in its proposal documents that were required to be included by the terms of the RFP. Ms. Gallegos then agreed to allow CA to submit the missing documents by April 3, 2015, more than a week after the deadline for submitting proposals. In response, CA submitted certain documents by April 3 and its proposal was then submitted for consideration by the evaluators. However, even after the Department improperly alerted CA to this deficiency and gave it the opportunity to revise and add to its proposal after the filing deadline, CA still failed to submit accurate and complete information required by the RFP.

One of the items required to be completed and included in responding proposals is a form for “Additional Disclosures”. A copy of the form as included in CA’s proposal is attached to this position statement. *See* Attachment II. Item 2 of this form asks:

Within the past five (5) years, has your organization or any representative, owner, partner or officer (collectively “your Company”) ever been a party to any court or administrative proceedings or disciplinary action, where the violation of any local, state or federal statute, ordinance rules, regulation, or serious violation of company work rules by your company was alleged?

If yes, on a separate page provide a detailed explanation outlining the following:

- Date of citation or violation
- Description of violation
- Parties involved
- Current status of citation.

In its proposal, CA responded “No” to this inquiry.

On September 17, 2013, CA was the subject of an audit report by the Office of Inspector General of the U.S. Department of Housing and Urban Development (“HUD”). *See* Attachment III. This report addressed CA’s use of funds awarded to it by HUD for a supportive housing program under the American Recovery and Reinvestment Act (“ARRA”). The report concluded that:

Community Advocates did not properly administer its Program and Recovery Act Grant funds. Specifically, it did not (1) ensure that Program funds were used for eligible activities and (2) maintain documentation to support required match contributions. It also (1) failed to maintain a financial management system that separately tracked the source and application of Recovery Act funds and (2) lacked sufficient documentation to support the allocation of operating costs. These weaknesses occurred because Community Advocates

failed to implement adequate financial accounting procedures and controls to ensure compliance with Federal requirements. As a result, HUD and Community Advocates lacked assurance that more than \$1.7 million in funds for its Program and Recovery Act grants were used in accordance with Federal requirements.

The report further recommended that HUD require CA to reimburse HUD for more than \$1.7 million of such funds if CA was unable to provide proper supporting documentation for its use of the funds. A copy of the report accompanies this position statement.

This report documents an “administrative proceeding or disciplinary action” alleging an egregious violation of Federal statutes and rules involving the use of and accounting for Federal grants. The RFP required that it be disclosed as a part of CA’s proposal. But it is nowhere mentioned in the proposal. The proposal is therefor incomplete and non-responsive and should have been rejected.

(B) Additionally, CA’s proposal is non-responsive because it presents a patently unrealistic budget for providing the services required by the RFP and is totally out of line with its own history and experience with the program. This resulted in exaggerating the financial attractiveness of its proposal. Specifically, CA’s proposal contemplates using the available dollars to serve 96,800 clients in the County annually. The total number of WHEAP clients served in Milwaukee County in 2013-14 was 67,089. Accordingly, CA proposes to serve 44% more clients in 2015-16 than were served in the previous year by both CA and SDC, and to do so with fewer dollars. How it proposes to work this magic is nowhere explained in its proposal. Even when the available funding was reduced as a result of the action announced by the Department on April 22, 2015, CA subsequently maintained that it could still serve the same number of clients as set forth in its original proposal.

(C) The State Manual requires each WHEAP provider to have facilities, hours and sufficient staff in place to process applications in a timely manner, to provide energy related emergency and crisis interventions, and to coordinate referrals for the HE+ Furnace Program. State Manual §§ 8.2.6, 8.2.7, and 8.2.8. A thorough review of CA’s proposal discloses no adequate provisions for meeting these needs.

**3. The scoring of the competing proposals by the Department’s evaluators is inconsistent, irrational and otherwise flawed.**

The Department’s inconsistent, irrational, and otherwise flawed scoring process is shown in a number ways. First, the scores given to SDC in the Administrative Ability category have inexplicable variations. Under the RFP, the Administrative Ability category asks the proposer to demonstrate its ability to meet government requirements, make timely submissions and payments, provide timely and accurate reports, and respond to crises. It makes sense that an organization’s ability in these areas remains the same regardless of the zone in which it is to operate. Nevertheless, SDC’s high score of 76.00 in this category was given only in one zone. The Administrative Ability score given to CA, on the other hand, was the same in each zone. It is irrational to score the same organization’s administrative ability differently in different zones, and it is inconsistent to introduce fluctuations in this particular measure for SDC but not for CA.

Scoring under the Administrative Ability category for line item 1a, measuring “on time and accuracy with required submissions”, also is irrational, inconsistent and flawed. SDC received no points at all by any reviewer in this line item. At first glance, it appears that the footnote marked with one asterisk allows the reviewer to refrain from scoring this item. A closer look, however, shows that this explanation does not make sense. The same footnote applies to other line items in which scores were entered for SDC. Moreover, scores were awarded to both CA and UMOS in this category. The end result is that SDC appears to have received zero points for on time and accurate submissions. SDC contends that it should have received at least some point value in that category.

Another scoring flaw is in the Previous Experience category, comprising 13 percent of the weight. SDC received scores in this category that are inferior to CA’s scores despite the fact that SDC has 37 years of previous experience with this program, as opposed to CA’s four years of providing service at a limited level. Moreover, during the time that CA and SDC have both been providers, SDC has served, by far, the larger number of clients; and, until January of 2015, has been the sole provider of furnace replacement services. SDC’s decades of experience vastly outstrip CA’s experience, yet CA received higher scores. This clearly reflects irrationality in the scoring process.

An additional example of the irrational scoring process is the fact that none of the proposers received any points whatsoever for line items 2a, “accurate, clear, and detailed budget”, and 2b, “budget adequately supports program”, in the Budget Justification category. If none of the proposers were able to put together adequate responses to these items, it most likely indicates that the RFP budget instructions or information provided were deficient in spelling out the requirements.

**D. Conclusion**

For all of the reasons stated above, SDC requests the Review Committee to reject all proposals and conduct a new request for proposal process. Alternatively, the Review Panel can require the Department to re-score the proposals, following the guidelines and scoring criteria applicable to the RFP and eliminating the arbitrariness and other flaws discussed in the appeal.

Respectfully submitted,  
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