

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF ADMINISTRATION**

ANGELA GUTIERREZ)
)
v.)
)
DEPARTMENT OF HEALTH AND)
SOCIAL SERVICES) OAH No. 11-0463-PRO
_____) ITB No. 2012-0200-0738

DECISION

I. Introduction

The Department of Health and Social Services (Department) issued a solicitation for transcription services. Seven bids were submitted, and the Department issued a notice of intent to award the contract to the lowest bidder, Net Transcripts, Inc. River City Transcription (River City) filed a protest asserting that the Net Transcripts bid was not responsive because the firm did not meet the solicitation’s minimum experience requirement. The procurement officer denied the protest.

River City filed an appeal, and the matter was submitted to the administrative law judge for decision on the written record. Because River City has not shown that Net Transcripts lacks the experience required by the solicitation, the appeal is denied.

II. Facts

The Department of Health and Social Services issued an invitation for bids to provide transcription services to the Division of Senior and Disabilities Services, Adult Protection Services.¹ Adult Protection Services case workers visit vulnerable adults in their home or other residence to investigate and document possible instances of abuse or neglect.² Under the solicitation case workers would dictate or telephonically communicate case notes, case assessments, court petitions and other information to transcribers, who would then prepare and email back to the case worker written documents to be included in case files or submitted in legal

¹ Invitation to Bid No. 2012-0600-0728 (ITB).

² ITB p. 14.

proceedings.³ The purpose of the solicitation was to allow case workers to immediately call in and dictate case reports in order to increase accuracy, meet timeliness deadlines, and free up case worker time that would otherwise be spent on preparing the necessary documents.⁴

The invitation to bid included a provision stating the prior experience required of bidders:

The bidder must have a minimum of three (3) years experience, providing transcript services to a State Agency. Bidders must have three (3) years of experience transporting confidential documents by encrypted electronic mail through the internet. Experience will be requested in writing from [the] lowest responsive and responsible bidder after due date and before award.

A contractor's failure to meet these minimum prior experience requirements will cause their proposal to be considered non-responsive and their bids rejected.^[5]

In addition to the specified prior experience, the invitation to bid included, among other things, these specifications:⁶

- Contractor is able to distinguish between homonyms, and recognize inconsistencies and mistakes in medical terminology, referring to dictionaries, drug references, and other sources on anatomy, physiology, and medicine.
- Contractor needs to have in-depth knowledge of medical transcription guidelines and practices.
- Contractor must have the ability to translate medical jargon and abbreviations into their expanded forms.

Net Transcripts is a firm with extensive experience in providing transcription services for use in legal proceedings. The firm's staff and nationwide network of about 100 transcriptionists includes individuals who are certified medical transcriptionists.⁷ While the firm does not have specific experience in providing medical transcription services, it has worked extensively in the medico-legal arena, specifically in such areas as victim abuse services, coroners' offices, and forensic investigations.⁸ Net Transcripts bid provides for the use of transcriptionists with experience in both medical and legal terminology, along with reference materials and other tools to enhance recognition of and accuracy in the use of specific medical terminology.⁹

³ ITB p. 14.

⁴ ITB p. 15.

⁵ ITB p. 14.

⁶ ITB pp. 14-15.

⁷ Net Transcripts Bid, pp. 9, 22.

⁸ Net Transcripts Bid, p. 14.

⁹ Net Transcripts Bid, p. 14.

III. Analysis

River City's protest, and its appeal, are premised on the view that the solicitation requires prior experience in medical transcription as a condition of responsiveness. That view is incorrect. The minimum prior experience requirement of the solicitation is that specifically stated on page 14, which is for three years experience "providing transcript services to a State Agency" and three years experience in "transporting confidential documents by encrypted electronic mail through the internet." Having that prior experience was expressly stated to be a condition of responsiveness. However, Net Transcripts meets those minimum requirements. River City has not claimed that Net Transcripts lacks the specific experience expressly required by the request for proposals.

Rather than saying that Net Transcripts does not meet the minimum experience requirements expressly stated in the solicitation, what River City says is that Net Transcripts lacks sufficient prior experience in medical transcription to meet the solicitation's performance specifications, which are referenced above. For example, River City argues that because Net Transcripts, as a firm, does not itself have substantial experience in medical transcription, the firm will have to rely on reference materials rather than prior experience in order to do the work.¹⁰ But the solicitation expressly permits the contractor to utilize reference materials in performing the work.¹¹ And while Net Transcripts, as a firm, may not have experience in medical transcription, it can provide the requested services using transcriptionists who do have such experience, which is substantially the same thing.¹²

Apart from these specifics, the contents of the solicitation as a whole do not suggest that Net Transcripts' lack of experience in medical transcription, as a firm, will prevent it from complying with the solicitation's performance specifications. Based on the description of the work and other information provided in the solicitation, it appears that the communications to be transcribed will not consist primarily of medical information. Indeed, it appears that medical information will in many cases not even be a part of the communication to be transcribed. In short, this is not a solicitation for services as a medical transcriptionist, even though medical information will in some cases be part of the communication to be transcribed. Given the nature

¹⁰ See, e.g., River City Closing Argument ("The bottom line here is that *reference materials and abbreviation tools do not equal medical transcription experience.*").

¹¹ ITB p. 14.

¹² Net Transcripts Bid, p. 14.

of the work, and given Net Transcripts' ability to employ transcriptionists with experience in medical transcription, and to use reference materials and other aids in support of personnel who lack such experience, the procurement officer did not abuse her discretion in deeming the Net Transcripts bid responsive.

IV. Conclusion

Net Transcripts meets the minimum experience requirements stated in the solicitation. River City has not shown that Net Transcripts' lack of experience in medical transcription, as a firm, will prevent it from meeting the Department's actual needs. Accordingly, the procurement officer's decision to deny River City's protest was not an abuse of discretion. The appeal is therefore denied.

DATED February 23, 2012.

By: Signed
Andrew M. Hemenway
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 28th day of March, 2012.

By: Signed
Signature
Becky Hultberg
Name
Commissioner
Title

[This document has been modified to conform to the technical standards for publication.]