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UNIVERSITY
of ALASKA
Many Traditions One Alaska

DATE: August 19, 2022

To: All Interested Parties

RE: Protest Decision Request for Proposals for Sale or Lease of Tract-1, U-MED Professional Park Subdivision, Parcel No. AN.AC.4017 (protest of solicitation)

This decision is issued in response to the protest of the University's terms and conditions contained in Request for Proposals for Sale or Lease of Tract-1, U-MED Professional Park Subdivision, Parcel No. AN.AC.4017 (protest of solicitation).

The Protester filed its protest by email delivery and mail delivery to UA Land Management Property Officer Laura Carmack on July 19, 2022. Pursuant to the terms in the solicitation the protest was filed timely.

As a potential offeror the Protester is deemed to be an interested party pursuant to Alaska Statute (AS 36.30.560).

The protest meets the requirements as defined in Alaska Statute (AS) 36.30.560 and UA Procurement Manual Section 10.3: it lists the protesting entity's name, address and telephone number; contains the signature of the protester's representatives; identifies the contracting agency and the solicitation; contains a detailed statement of the legal and factual grounds for the protest, including copies of relevant documents; states the form of relief request; and was received timely.

Therefore, the protest is accepted.

Background

On June 24, 2022, UA Land Management issued a Request for Proposals to Lease or Purchase Tract 1, U-MED Professional Park Subdivision. The submittal deadline was July 29, 2022, 5:00 p.m. local time. A pre-proposal conference was held on June 30 with a deadline for questions of July 8. Two (2) firms submitted questions. UA Land Management provided a consolidated response to interested parties on July 15. Note that this solicitation is issued as a request for proposals rather than an invitation for bids, meaning that evaluation factors other than price are to be considered. Price, whether lease or sale, is provided a weight of 55 out of a total of 100. Also note that a solicitation method of request for proposals is considered to be a negotiated sale.

Discussion of Protest Issues

The Protester raised two issues both related to questions asked and UA Land Management's consolidated response.

(1) The RFP does not contain sufficient information to allow offerors to understand how the University will compare a “lease” offer to a “fee simple purchase” for Tract 1.

(2) The 24-business days for a comprehensive response are not sufficient to allow meaningful competition.

The Protester asserts that neither issue was adequately addressed in the consolidated response issued July 15.

I will address the protest issues in the order they were presented.

1. The RFP does not contain sufficient information to allow offerors to understand how the University will compare a “lease” offer to a “fee simple purchase” for Tract 1.

The University agrees that the evaluation process as described in the solicitation implies that offers to purchase the property and offers to lease the property will be evaluated in a manner that ranks the financial offers against each other. However, it does not describe how this comparison would be performed. After reviewing this issue with a commercial real estate professional and unsuccessfully attempting to find other solicitations that employ this methodology, it is clear that the evaluation process needs to be more clearly described. In short, there is no way that the evaluation of the solicitation, as currently constructed in the RFP, can be performed in manner that ensures that the process was fair, transparent, and objective.

Therefore the protest of this issue is *UPHELD*.

The University finds that the most equitable way to address this issue is to cancel the current solicitation, work with University stakeholders to develop a fair and transparent evaluation process that can be objectively reviewed, then issue a new solicitation. The new solicitation shall be issued on or about September 1, 2022. At a minimum the evaluation process will include a Basis for Award section that describes how proposals will be scored and evaluated, and how the University will use the results to reach a final decision regarding acceptance of a purchase or a lease offer.

2. The 24-business days for a comprehensive response are not sufficient to allow meaningful competition.

The University Procurement Policy mirrors State of Alaska Statute, which requires that formal solicitations be publically advertised for a minimum of 21 calendar days (AS 36.30.130). The Request for Proposals for Sale or Lease of Tract-1, U-MED Professional Park Subdivision, Parcel No. AN.AC.4017 was publically advertised on June 24, 2022 with a submittal deadline of July 29, 2022, a total of 35 calendar days. The University has sole authority to determine the length of a formal solicitation within the confines provided by Statute.

Therefore the protest of this issue is *DENIED*.

However, since the solicitation is being cancelled and reissued, and the new solicitation will have a response period of no less than (45) days, there will be more than adequate time for all interested parties to prepare an offer. Therefore, the issue is rendered moot.

An appeal of this protest decision may be filed with the Superior Court of the State of Alaska. An appeal shall be filed within 10 days after the decision is received by an interested party. The protestor shall also file a copy of the appeal with the Contracting Officer (UA Land Management). An appeal must contain the information required under AS 36.30.560 (see above). In addition, the appeal must include (1) a copy of the decision (this document) and (2) identification of the factual or legal errors in the decision that form the basis for the appeal (i.e., you must demonstrate that I have made an error in fact or show with specificity that I have violated the law.)

Sincerely,

University of Alaska

Digitally signed by


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John A. Hebard, C.P.M.
UA Chief Procurement Officer

cc: General Counsel
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