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February 28, 2019

2019 MAR -4 AM 9: 28

Via Federal Express

Materiel Division Administrator
Administrative Services
1526 K Street, Suite 130
Lincoln, NE 68508

Re: Grievance/Protest of the award of a contract to PeerPlace Networks, LLC (“PeerPlace”) in response to RFP NUMBER 5948 Z1 for an Aging Information System Software Solution (the “RFP”)

Dear Sir or Madam:

On February 21, 2019, Administrative Services (“AS”) posted an Intent to Award a contract to PeerPlace resulting from the above-referenced RFP (the “Award”).

Pursuant to the Nebraska Department of Administrative Services Materiel Division-State Purchasing Bureau Standard Protest/Grievance Procedures for Vendors, WellSky Corporation (“WellSky”) hereby protests the Award.

As more fully set forth below, WellSky believes its protest is appropriate because: (i) PeerPlace and RTZ Associates, Inc. (“RTZ”) each failed to comply with the RFP requirements and should have been disqualified prior to the selection of a vendor; (ii) the RFP process was not consistent with the requirements of the RFP, and (iii) PeerPlace, the selected vendor, managed the bid process to achieve an advantage at the expense of the best interests of Nebraska.

- 1) The initial Cost Proposal Responses for both PeerPlace and RTZ did not comply with the cost proposal requirements. Therefore, both the PeerPlace and RTZ proposals should have been disqualified prior to evaluation (in the best interest of the State of Nebraska), and should now be disqualified. Specifically, on Page 3 of Attachment A Cost Proposal (5948 Z1 Attachment A Cost Proposal.doc), the required form for cost proposal submission, the following instruction appears: “Please note that the sum of the percentage of payment prior to completion of implementation **cannot** exceed 35%. The total cost cannot exceed the total cost on Form A.” [emphasis in original].

Submissions from both PeerPlace and RTZ reflected payments exceeding 35% prior to completion of implementation. In the case of PeerPlace, 95% of the fees are to be paid by the State of Nebraska prior to completion of the implementation, and in the case of RTZ, 90% of the fees were to be paid by the State of Nebraska prior to completion of the implementation.

Had those responses been disqualified per the requirements of the cost proposal, the Award would have gone to a different vendor.

- 2) The plain reading of the RFP suggests that all vendors should have been afforded the opportunity to submit a Best and Final Offer (“BAFO”). However, PeerPlace and RTZ were the only vendors invited to submit a BAFO. Had all vendors been afforded the opportunity to provide BAFOs, the State of Nebraska would have had the benefit of best and final pricing from all vendors and the vendor selection may have been different.



The RFP instructions made clear circumstance where all bidders would not be permitted to participate in the process. The RFP did not give notice that some vendors would not be permitted to participate in the BAFO process.

- a. Section I.R ORAL INTERVIEWS/PRESENTATIONS AND/OR DEMONSTRATIONS (Page 5) of the RFP instructions (5948 Z1 specs final.doc) contains the following information: "Every bidder may not be given an opportunity to interview/present and/or give demonstrations; the State reserves the right, in its discretion, to select only the top scoring bidders to present/give oral interviews."
- b. In the section immediately following (Section I.S BEST AND FINAL OFFER), no instruction indicating that a bidder would not be able to participate was included. Therefore, making clear that all vendors would have expected to have the opportunity to submit a BAFO.

Had additional vendors been invited to submit a BAFO, it is likely the results would have been different, and the best interests of the State of Nebraska would have been served.

- 3) PeerPlace, the awarded bidder, increased its pricing at the BAFO stage of the process. In other words, PeerPlace used lower pricing during the initial scoring stage to gain a scoring advantage and then increased its pricing by more than \$100,000 after using its artificially low scoring to be invited to the BAFO stage. This is a dangerous precedent that could significantly harm future procurements if vendors know that they can simply under bid at the scoring stage in order to advance. Had PeerPlace submitted its true bid covering all required functionality initially, scoring after the initial round would have been closer, and a BAFO process may have been more inclusive and led to a different winner.

Because of the foregoing, WellSky requests that AS rescind the Intent to Award and requests that AS either (i) disqualify PeerPlace and RTZ outright (as would seem to be appropriate as described in 1 above) and award the contract to the next acceptable bidder; or (ii) allow all evaluated bidders to submit BAFOs in accordance with the RFP.

The point of contact for this grievance/protest is set forth below and all responses can be sent to the address below.

Robert C. Weber
WellSky Corporation
11711 W. 79th Street
Lenexa, KS 66214 11770
Phone: 630-218-2705
Rob.weber@wellsky.com

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "Robert C. Weber" with a stylized flourish at the end.

Robert C. Weber
President Community Care
General Counsel