

February 24, 2023

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Delivered via email: [mhartwig@countyofsb.org](mailto:mhartwig@countyofsb.org)

Dear Chief Hartwig,

Thank you and your team for presenting to the Appeal Panel/Protest Resolution Committee on January 26, 2023. The Panel appreciated the effort demonstrated by your presentation.

The Appeal Panel was tasked with resolving the Fire Protection District's appeal of the Purchasing Agent's denial of the District's Protest of the results of the LEMSA's ambulance services RFP, which identified American Medical Response (AMR) as the apparent successful bidder. The Panel's review was limited to the Record on Appeal, as well as the oral presentations related to those materials. The Appeal process did not allow for the consideration of new material or adjusting the reviewer scoring. The Panel independently considered each of the six Protest Issues raised on appeal and denied by the Purchasing Agent.

The Appeal Panel's final, unanimous decision is attached.

Sincerely,



Bill Bullard, MBA, EFO, CFO  
President

Encl: Ambulance Service RFP Appeal Panel – Final Decision

cc: Pam Johnston, Counsel for AMR  
Jennifer Richardson, Counsel for Fire District  
Terri Maus-Nisich, Assistant CEO  
Brian Pettit, Deputy County Counsel  
Mouhanad Hammami, Public Health Director

## AMBULANCE SERVICE RFP APPEAL PANEL – FINAL DECISION

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### **District Protest Issue #1: False and Misleading as to RFP Minimum Qualifications**

*District states “AMR [American Medical Response West] Proposal is False and Misleading as to RFP Section 2.9 Minimum Qualifications because AMR failed to identify recent noncompliance and, thus, the panel should have scored this requirement with a “fail” and discontinued consideration of AMR’s proposal.” (Protest, p. 2) District specifically refers to RFP section 2.9.B. (Protest, p. 2.)*

*In a Supplemental submission, the District further supported this Protest Issue with the assertion that AMR omitted an “ongoing contract dispute” from its Proposal. (Supp. Protest, p. 2.)*

**Appeal Panel’s Decision on Protest Issue #1:** The Appeal Panel sustains the Purchasing Agent’s denial of this Protest Issue #1.

The Purchasing Agent concluded that the Proposal Review Panel scored both Proposals as a “pass” for RFP Section 2.9 in accordance with the Proposal Evaluation Criteria set forth in RFP section 2.11. The Appeal Panel agrees.

Section 2.9 of the RFP required Proposers to provide information showing that the Proposer met each of the four minimum qualification areas. To show compliance with the “Experience in managing a clinically sophisticated Emergency Ambulance Service” minimum qualification (RFP Section 2.9.E.i), AMR listed the 21 California communities in which it provides emergency ambulance services, as well as contact information, number of responses in the last two years, and a brief description of the community and service type.

The RFP did not require Proposers to identify “noncompliance” or “ongoing contract disputes” to show compliance with the “Experience in managing a clinically sophisticated Emergency Ambulance Service” minimum qualification. Therefore, under RFP section 2.5, failure to include this information in the Proposal does not constitute a “false or misleading” statement nor “references which do not support an attribute or condition claimed.”

### **District Protest Issue #2: Failure to Comply with RFP Proposal Evaluation Criteria**

*District states “AMR Proposal Is Nonresponsive to sections 4.2 and 4.10 of the RFP and thus the entire AMR Proposal should be considered non-responsive (RFP page 30), and the contract awarded to the District. The proposers were not accorded fair and equal consideration in the evaluation process because the bids were not evaluated in accordance with the stated Proposal Evaluation Criteria.” (Protest, p. 3.)*

*In regards to RFP section 4.2 District states “Appendix 10 to the RFP is entitled “Sample Proposal Evaluation Criteria Explained” and contains questions intended to guide the Proposal Review Panel (“PRP”) in evaluating the various sections of the proposals. For Section 4.2, Appendix 10 provides evaluators with the following guidance: Has the Proposer fully outlined what*

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*data/metrics it will collect and how it will be used to improve the clinical practice within the EMS system?” (Protest p. 4.) District continues “AMR failed “to “fully outline” the data/metrics AMR will collect or how such data will be used to improve clinical practice within the EMS system. Because it fails to provide the information requested in Section 2.1 of the RFP, the Proposal is nonresponsive and cannot be accepted by County.” (Protest, p. 5.)*

*In regards to RFP section 4.10 District states that AMR failed to identify 7 elements listed under RFP section 4.10 and concludes “[t]he AMR Proposal, therefore, fails to fully respond to the instructions in Section 4.10 of the RFP, should have thus been scored as unsatisfactory by 3+ reviewers, and the entire AMR Proposal should be deemed non-responsive. (RFP page 30.)” (Protest, p. 5-7.)*

**Appeal Panel’s Decision on Protest Issue #2:** The Appeal Panel sustains the Purchasing Agent’s denial of this Protest Issue #2.

The Purchasing Agent concluded that the Proposal Review Panel scored both Proposals for Sections 4.2 and 4.10 in accordance with the Proposal Review Criteria set forth in RFP section 2.11. The Appeal Panel agrees. Appendix 10 is titled “Sample”, and the RFP did not require Proposers to specifically respond to the questions in Appendix 10.

The RFP used the word “should” to describe the level of detail to be included in proposals in Section 4.10. This language does not denote a requirement but a recommendation. Therefore, the AMR proposal was not obligated to answer every item, and failure to do so does not constitute a “non-responsive” Proposal, even if additional information was suggested.

The Proposal Review Panel scored the Proposals’ responses to Section 4.10 based on the information provided, and per RFP section 2.10.G.iii, any challenge to the Review Panel’s judgment in evaluating that information is not considered a valid protest.”

### **District Protest Issue #3: Possible Violation of the Medicare and Medi-Cal Anti-Kickback**

*District states “County Must Reject The AMR Proposal And Refuse To Contract With AMR Because The Proposal Appears To Offer To Allow The County To Access PPIGT Funding In Violation Of The Medicare and Medi-Cal Anti-Kickback Statute (AKS).” (Protest, p. 9.)*

**Appeal Panel’s Decision on Protest Issue #3:** The Appeal Panel sustains the Purchasing Agent’s denial of this Protest Issue #3.

The Purchasing Agent accepted AMR’s response to this Protest Issue that AMR made no actual offer for remuneration, and only a hypothetical and future potential program was referenced in the AMR proposal. The Appeal Panel agrees.

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### **District Protest Issue #4: Additional False or Misleading Statements**

*District states “The AMR Proposal should be rejected because it contains additional significant false or misleading statements. As per the County of Santa Barbara RFP No. 8010001, Section 2.5 False or Misleading Statements, “Responses which contain false or misleading statements, or which provide references which do not support an attribute or condition claimed by the Proposer, must be rejected, subject to the County’s ability to waive minor irregularities.” (Protest, p. 11.)*

**Appeal Panel’s Decision on Protest Issue #4:** The Appeal Panel sustains the Purchasing Agent’s denial of this Protest Issue #4.

The Purchasing Agent accepted AMR’s response to this Protest Issue that the identified statements in AMR’s Proposal were either accurate or constituted a minor irregularity in the Proposal. The Appeal Panel agrees. The Appeal Panel reviewed the statements independent of the Purchasing Agent, including the map on page 103 of AMR’s Proposal, which AMR acknowledged was “incorrectly color-coded”, though accurately described on page 107, as well as AMR’s use of the phrase “Exclusively AMR”. The Appeal Panel concludes that none of the statements in question denoted a major irregularity constituting a “false or misleading statement.”

### **District Protest Issue #5: Failure to Consider Economic Benefits to County**

*District states “Santa Barbara County Code of Ordinances, Article VI, Section 2-40(d) for competitive bidding requires fiscal statements. Cost is always a factor when the County purchases on behalf of the taxpayer and failure to require this information in soliciting and evaluating bids harms the County and is inconsistent with the County Code.” (Protest, p.12.)*

**Appeal Panel’s Decision on Protest Issue #5:** The Appeal Panel sustains the Purchasing Agent’s denial of this Protest Issue #5.

The Appeal Panel agrees with the Purchasing Agent’s conclusion that the District misapplies County Code sections 2-40(d) and 2-40.1(a), which implement the County Purchasing Agent’s delegated authority to enter into contracts. The RFP specified the Proposal Review Criteria for the Financial Assessment of the Proposals. The Appeal Panel agrees with the Purchasing Agent’s conclusion that the Proposal Review Panel scored both proposals as a “pass” for the Financial Assessment in accordance with the Proposal Review Criteria set forth in RFP section 2.11.

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## **District Protest Issue #6: Failure to Comply with RFP Proposal Instruction**

*District states “AMR’s Proposal did not comply with the RFP rigorous proposal instructions (RFP 2.8 Proposal Instruction, pg. 19); therefore, the AMR Proposal should be considered nonresponsive, rejected, and the contract awarded to the District.” (Protest, p. 13.)*

**Appeal Panel Decision on Protest Issue #6:** The Appeal Panel sustains the Purchasing Agent’s denial of this Protest Issue #6.

The County could waive minor irregularities in compliance with proposal instructions. The Appeal Panel agrees with the Purchasing Agent’s conclusion that the Proposal Review Panel scored both proposals as a “pass” for the section 2.8 in accordance with the Proposal Evaluation Criteria set forth in section 2.11, and that any minor irregularity in AMR’s Proposal, such as including materials in the attachments, did not render the Proposal “non-responsive.”

## **Conclusion of the Appeal Panel**

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Within the finite scope of the Appeal Panel’s review, it cannot uphold any of the Protest Issues brought forward by the Santa Barbara County Fire Protection District.

## **Panelists**

- Terri Maus-Nisich, Assistant CEO
- George Chapjian, Director of Community Services
- Toni Navarro, Director of Behavioral Wellness
- Tracy Macuga, Public Defender