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DEPARTMENT OF AUDITOR-CONTROLLER**

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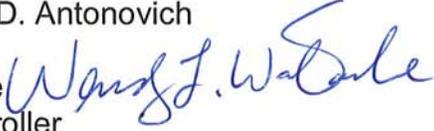
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October 21, 2008

TO: Supervisor Yvonne B. Burke, Chair
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FROM: Wendy L. Watanabe 
Acting Auditor-Controller

SUBJECT: **REVIEW OF MAXIMUS' ALLEGATIONS REGARDING THE
EVALUATION OF ITS PROPOSAL TO PROVIDE GAIN CASE
MANAGEMENT SERVICES**

We reviewed allegations made by MAXIMUS, Inc., regarding the Department of Public Social Services' (DPSS) evaluation of MAXIMUS' proposal to provide Case Management Services for the Greater Avenues for Independence (GAIN) program. DPSS evaluated proposals for GAIN Case Management Services from two firms; MAXIMUS, Inc. (MAXIMUS) and Policy Studies, Inc. (Policy Studies). Policy Studies' proposals were rated significantly higher than MAXIMUS.

MAXIMUS made a number of allegations regarding DPSS' evaluation process but indicated that, except for four allegations, most of their concerns had been addressed. As a result, our review was limited to the four allegations cited by MAXIMUS in their request to have a County Contract Review Panel evaluate DPSS' actions. Specifically, MAXIMUS alleged:

- DPSS failed to properly evaluate the proposers' start-up costs and plans.
- DPSS' Evaluation Facilitator, who administered the initial proposal evaluation process, improperly changed some evaluation scores.
- DPSS improperly penalized MAXIMUS for allegedly failing to disclose all of its labor law violations.
- DPSS improperly shredded some evaluation documents and refused MAXIMUS access to other documents.

Our review indicates that, while there were some discrepancies in DPSS' evaluation process, the discrepancies were generally minor and would not have changed the significant difference between the higher score awarded to Policy Studies and the lower score awarded to MAXIMUS. The following are the detailed results of our review.

BACKGROUND

In March 2008, DPSS issued the GAIN Case Management Services Request for Proposals (RFP) and allowed vendors to submit a separate proposal to contract for each of the two regions, or a combined proposal for both regions. An Evaluation Committee reviewed and scored the proposals. DPSS selected Policy Studies for both regions. MAXIMUS is the current contractor in both regions and challenged DPSS' evaluation process.

In accordance with the County's Contract Solicitation Protest Policy approved by your Board in 2004, MAXIMUS' allegations were reviewed first by a Proposed Contractor Selection Review administered by the responsible department, DPSS; and then by a Contract Review Panel administered by the Chief Executive Office (CEO). While the Proposed Contractor Selection Review and Contract Review Panel noted areas where DPSS could have improved the proposal evaluation process, it did not support any of MAXIMUS' allegations.

REVIEW OF MAXIMUS' ALLEGATIONS

Allegation 1: DPSS failed to properly evaluate start-up costs in the Business Proposal section and the County's decision not to evaluate the proposers' start-up plans violates the RFP.

Review Results

The RFP required proposers to submit a start-up plan and start-up budget. The Evaluation Worksheet requires the Evaluation Committee, which did the initial scoring of the proposals, to review a budget that supports and is consistent with the start-up plan. However, DPSS did not give the Evaluation Committee the proposers' start-up budgets. As a result, the Evaluation Committee members evaluated the proposers' start-up plans, based solely on the description of the plan and did not compare the start-up plan to the budget.

DPSS indicated that they did not intend to include scoring based on comparing the start-up plan and the start-up budget. DPSS indicated that this error occurred because language from a prior unrelated evaluation was erroneously included in the Evaluation Worksheets.

When MAXIMUS challenged DPSS' failure to award points based on comparing the start-up plan and budget, the DPSS Proposed Contractor Selection Review administrator decided to eliminate all the points for start-up plans/budgets from the evaluation scores for both MAXIMUS and Policy Studies. This resulted in a reduction of 311 points from MAXIMUS' total score and a reduction of 389 points from Policy Studies' score. We also noted that, while MAXIMUS is the current contractor, their start-up budget was higher than Policy Studies.

Conclusion

DPSS did exclude start-up plans/budgets and subtracted the related points from the scoring from the evaluation. However, this did not affect the outcome of the evaluation.

Allegation 2: MAXIMUS claims the DPSS Evaluation Facilitator, who oversaw the original proposal evaluation process, changed evaluation scores in three areas, and that this indicates the County made errors in the evaluation. MAXIMUS submitted signed declarations from seven employees of MAXIMUS, or its subcontractor, Jewish Vocational Services, claiming the Evaluation Facilitator acknowledged making the changes.

Review Results

We reviewed the declarations and noted that, in two of the three areas where MAXIMUS alleges the Evaluation Facilitator made changes, the Evaluation Worksheet indicates the Evaluation Facilitator is supposed to do the scoring. This is consistent with other County evaluation panels, where the scores for some evaluation criteria are assigned by specific County personnel. In the third area where MAXIMUS alleges the Evaluation Facilitator made changes related to contract terminations, we spoke with the members of the Evaluation Committee, who all indicated that they did the scoring.

The following is a detailed discussion of the three areas where MAXIMUS claims scores were changed.

Labor Law/Payroll Violations

The RFP required bidders to disclose all labor law/payroll violations and states the County may deduct from 1 to 20 percent of the maximum overall points for violations with higher deductions if a proposer failed to disclose all violations. The County Labor Law/Payroll Violations Assessment Team (Assessment Team), an independent group with staff from the Internal Services Department (ISD), the CEO and the Auditor-Controller, is responsible for reviewing labor/payroll violations and recommending percentage deductions for all County RFPs.

The Assessment Team reviewed MAXIMUS' reported violations and recommended a deduction for MAXIMUS failing to disclose a violation. The winning bidder, Policy Studies, was also penalized for a self-reported violation. The Assessment Team recommended 1% penalties for both proposers. The Evaluation Facilitator had no input on the recommended percentage penalty for this area.

It should be noted that, when DPSS computed the number of points to be deducted based on the Assessment Team's recommended percentage, the Department based the point deduction on a maximum of 500 points for the proposal evaluation. However, as indicated in the RFP, the GAIN Case Management proposal had a maximum of 10,000 points. As a result, both MAXIMUS and Policy Studies were only penalized 5 points (1% of 500 points), when they both should have been penalized 100 points (1% of 10,000 points). DPSS indicated that this occurred because they used an old Evaluation Worksheet as a template.

Conclusion

DPSS computed the penalty for labor violations based on lower total points. However, because both proposers were assessed the same penalty, this did not affect the outcome of the evaluation.

Acceptance of County Terms and Conditions

The RFP required proposers to state that they accept all of the Terms and Conditions in the Sample Contract. If a proposer was not willing to accept a provision, the proposer must explain why, provide alternative language and give the impact on the proposer's price. The RFP stated that a deduction of 0 to 25 points may be made for exceptions to Terms/Conditions. The Evaluation Worksheet indicates the amount of the deduction will be determined by the Evaluation Facilitator, based on the number of exceptions, and whether the Evaluation Facilitator considered the exceptions to be "minor" or "major".

MAXIMUS' proposal did not indicate acceptance of all the County's Terms and Conditions. Instead, MAXIMUS listed 15 provisions that it wanted to "discuss and clarify". MAXIMUS did not indicate if they were taking exception to the provisions, explain the reasons for their non-acceptance, or suggest alternative contract language as required by the RFP. After conferring with County Counsel, DPSS determined MAXIMUS was taking exception to the 15 contract provisions.

DPSS' Evaluation Facilitator assessed the maximum deduction of 25 points based on MAXIMUS' failure to accept the 15 Terms and Conditions, and specifically taking exception to 15 separate contract provisions, two of which DPSS considered to be "major" exceptions (Liquidated Damages, Paragraphs 11.15.7.1 (b) and 11.15.7.2 (b)). While the RFP did not define "minor" or "major" exceptions, this determination was

apparently left to the discretion of the Evaluation Facilitator, we believe the 25 point deduction was reasonable.

Conclusion

The 25 point deduction from MAXIMUS for not accepting all of the County's Terms and Conditions appears reasonable.

Terminated Contracts

The RFP required proposers to list all contracts terminated in the last five years, and the reason for the termination(s). Proposers were also required to provide details of any failure/refusal to complete a contract. This information was used to assess the proposer's past performance. The Evaluation Committee made this assessment based on objective, pre-established criteria. For example, no points were awarded if the proposer had two or more contract terminations for alleged sub-standard performance. Proposers who reported no terminated contracts would receive the maximum of 133.5 total points. Under a separate evaluation criteria, proposers could also receive points if they had no reported failing or refusal to complete a contract, or if they provided a reasonable explanation for a reported contract termination. One point was awarded if the reason for the failure/refusal was not acceptable.

As noted earlier, vendors could submit proposals for one or both of two separate regions and/or a combined proposal for both regions. In its proposals for one of the regions and for the combined regions, MAXIMUS indicated it had six contracts that were terminated for default in the last five years. In its proposal for the other separate region, MAXIMUS only identified five contracts were terminated for default. For example, one of the agreements was terminated because of MAXIMUS' alleged failure to deliver a report within the required timeframe. In each instance, MAXIMUS indicated that it disagreed with, or was disputing, the termination. However, MAXIMUS did not provide a detailed explanation supporting its claim that the six terminations were inappropriate.

The Evaluation Committee awarded no points to MAXIMUS because it had disclosed two or more terminated contracts for alleged sub-standard performance. The Evaluation Committee did award one point to MAXIMUS for its explanation of failure/refusal to complete a contract.

Conclusion

The points awarded to MAXIMUS for disclosing terminated agreements was reasonable and consistent with the objective scoring criteria in the Evaluation Worksheet. There was no indication that the Evaluation Facilitator changed the score of the Evaluation Committee related to terminated contracts.

Allegation 3: DPSS improperly penalized MAXIMUS for allegedly failing to disclose all of its labor law violations.

Review Results

The RFP required bidders to disclose all labor law/payroll violations, and states the County may deduct 1 to 20 percent of the maximum overall points for violations, with higher deductions if a proposer failed to disclose all violations. As noted earlier, the County Labor Law/Payroll Violations Assessment Team (Assessment Team) is responsible for reviewing labor/payroll violations for all County RFPs and recommending percentage deductions.

The Assessment Team reviewed MAXIMUS and Policy Studies' reported violations and recommended a 1% deduction for each proposer. MAXIMUS was penalized for failing to disclose a violation. In their appeal, MAXIMUS claimed they had disclosed all violations, and that they should not have been penalized. We compared the violations listed in MAXIMUS' proposal to the State Division of Labor Standards Enforcement (DLSE) report of violations, and noted a violation on the DLSE report that MAXIMUS did not disclose. The winning bidder, Policy Studies, was also penalized for its self-reported violation.

Conclusion

DPSS appropriately deducted points from MAXIMUS for failing to disclose all labor law/payroll violations.

As previously discussed, DPSS erroneously calculated the deduction for labor/payroll violation, by calculating the penalty based on 500 total evaluation points, instead of 10,000 points. However, this error did not change the outcome of the proposal evaluation.

Allegation 4: DPSS improperly shredded some evaluation documents and refused MAXIMUS access to other documents, making the County's review process "illusory".

Review Results

DPSS used consensus scoring, with each Evaluation Committee member preparing their own worksheets and written comments for each proposal. The Evaluation Committee members then met to discuss their scores and comments, and arrived at a consensus score for each proposal, along with consensus comments. Once the consensus Evaluation Worksheet was finalized, the individual sheets were discarded along with any notes, etc.

We confirmed with the Evaluation Committee members that the process was followed. We did note that the Committee members did not sign the consensus Evaluation Worksheet. However, we compared the copies of the consensus Evaluation Worksheet the Evaluation Committee members had to the Evaluation Worksheet shown to MAXIMUS at their debriefing. We noted that the Worksheets were consistent, except for the changes made by DPSS' Director of Administrative Policy and Review discussed later in this memo.

Consensus scoring and discarding worksheets and notes of the individual evaluation committee members are recommended practices in the County. Since February 2002, ISD, in conjunction with County Counsel and the Auditor-Controller, has provided a two-day "Orientation to Basic Principles of County Contracting" class. In that class, trainees are taught that consensus scoring is highly recommended and is considered a best practice. Trainees are also advised that, when using the consensus approach, individual evaluation documents should be discarded after the consensus evaluation document is prepared. The policies taught in the training class are consistent with Section 7.13 of ISD's Services Contracting Manual, which contains recommended contracting policies for the County. The ISD Services Contracting Manual was issued in February 2003 and, according to ISD, has always included the policies on consensus scoring and discarding individual Worksheets.

MAXIMUS also objected to DPSS' failure to give them access to the Business/Cost Proposals and Evaluation Worksheet of Policy Studies. However, RFP Section 1.15 indicated that this information (except for Trade Secret, Confidential, and Proprietary material) will become public when the recommendation to award the contract appears on the Board agenda. This action has not occurred. RFP Section 1.13.4.1 indicated that the Proposer shall only be debriefed on its own response. Because the solicitation process has not been completed, responses from other proposers shall not be discussed. The provisions requirements are consistent with County contracting policies.

Conclusion

While there may be differing opinions on the use of consensus scoring and discarding individual evaluation documents, these practices are recommended County policy. DPSS' refusal to give MAXIMUS copies of Policy Studies' proposal and score sheet until the contract recommendation appears on the Board agenda is also consistent with County policy.

Other Observations

As noted earlier, during our review, we compared the copies of the consensus scoring Worksheets we received from Evaluation Committee members to the scoring Worksheets that MAXIMUS reviewed at its debriefing. We noted that some changes

were made after the Evaluation Committee completed its consensus scoring. Specifically, it appears that DPSS' Director of Administrative Policy and Review (DAPR), who was not part of the evaluation process, reviewed the consensus scores and recommended the following changes:

- Increasing MAXIMUS' score for Living Wage Compliance from 3 to 4 because MAXIMUS' lowest hourly wage rate exceeded the minimum living wage. The Evaluation Committee's score of 3 was appropriate if MAXIMUS had only met the minimum requirement. This change was reasonable and consistent with the evaluation criteria.
- Decreasing Policy Studies score for Financial Capability from 4 to 3. The evaluation committee comments supporting the score of Policy Studies were very similar to those for MAXIMUS, who had received 3. The change was recommended to provide consistency in scoring. This change appears to be reasonable and consistent with the evaluation criteria and comments.
- In making the DAPR's suggested change to Financial Capability evaluation criterion 1.D.1, the Evaluation Facilitator accidentally reduced Policy Studies' score for evaluation criteria 1.D.2 from 4 to 3. This change should not have been made.

DPSS indicated that, due to logistical considerations, the DAPR's recommended changes may not have been discussed and approved by the entire Evaluation Committee, before the scores were changed.

Conclusion

While we question the practice of having managers outside of the evaluation process review and recommend changes to proposal scores, the cumulative effect of all of the DAPR's changes increased MAXIMUS' score by 1 point for the Combined Regions, and decreased Policy Studies' score by 2 points for the Combined Regions. These differences would not have changed the results of the evaluation.

In summary, as noted earlier, our review indicates that, while there were some discrepancies in DPSS' evaluation process, the discrepancies were generally minor, and would not have changed the significant difference between the higher score awarded to Policy Studies and the lower score awarded to MAXIMUS.

Board of Supervisors
October 21, 2008
Page 9

Please call me if you have any questions, or your staff may call Jim Schneiderman at (626) 293-1101.

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