

# MEMO

**DATE:** February 6, 2024

**TO:** Stephen M. DeFrank, Chiarman  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.  
Jennifer L. Berrier, Executive Director  
Robert C. Gramola, Director of Administration

**FROM:** Michael E. Roberts, Director of Human Resources and Issuing Officer

**SUBJECT:** Recommendation for contractor selection for PUC RFP-1-2023, Human Resources Legal Services

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On December 28, 2023, the Commission issued a Request for Proposals (RFP) to hire outside legal counsel to provide human resources legal services to the Commission. The RFP is at <https://www.puc.pa.gov/about-the-puc/request-for-proposals/>.

The term of the Contract will be for five years. The existing contract with Eckert Seamans ends on March 13, 2024. The Contract is a price-not-to-exceed, fee for service contract, where the attorneys bill hourly for services provided, up to a maximum amount. The total price-not-to-exceed is \$600,000.

The Commission received four proposals:

- McNees Wallace
- Eckert Seamans
- Petra Gallo
- Ahmad Zafferese

The technical evaluation committee has reviewed and scored the proposals, and for the reasons set forth below recommends that the Commission approve at Public Meeting the selection of McNees Wallace to provide human resources legal services to the Commission, and direct staff to enter into final contract negotiations.

**A. Activities to Date**

The following key activities/events have occurred with regard to the selection of the contractor:

- The Request for Proposals was issued on December 28, 2023.
- A Pre-Proposal Conference was held on January 10, 2024.
- Four Proposals were received by the 3:00 P.M., January 29, 2024 deadline.
- The Technical Evaluation Committee met on January 31, 2024, to discuss and finalize technical scores.
- The Disadvantaged Business and Veteran Business Participation review from the Bureau of Diversity, Inclusion, and Small Business Opportunities (BDISBO) was received on February 2, 2024.

**B. Technical Evaluation Committee Membership**

The technical evaluation committee that scored the technical proposals included the following five voting members from Human Resources:

Dana Barry  
Laurie Keller  
Hannah Smeltz  
Shannon Marciano  
Stephen Colantuono

Steve Bainbridge served as Commission legal counsel from Law Bureau.

**C. Proposal Scoring Criteria**

The proposal selection procedure utilizes a 1,000 point scoring system.

Technical Evaluation was based upon the following:

1. Experience in matters relating to labor and employment law. (500 Points.)
2. Overall legal experience. (150 Points.)
3. Availability of associate and partner level attorneys for various levels of work. (150 Points.)
4. Subject matter staff located in Capitol region. (200 Points.)

The Disadvantage Business review was completed by BDISBO. BDISBO determined that 9% of the work should be completed by a small, disadvantaged business, and 3% of the work should be completed by a veteran business enterprise. BDISBO rated bidders pass or fail.

Cost.

This is a professional services RFP issued pursuant to 62 Pa.C.S. § 518, Competitive Selection Procedures for Certain Services. This Procurement section is applicable because the Commission is seeking professional services, that is, attorney services. Pursuant to 62 Pa.C.S. § 518, cost is not an initial factor in determining the most qualified bidder. Specifically, Section 62 Pa.C.S. § 518(e) provides:

(e) Award. Award shall be made to the responsible offeror determined in writing by the contracting officer to be best qualified based on the evaluation factors set forth in the request for proposals. Fair and reasonable compensation shall be determined through negotiation. If compensation cannot be agreed upon with the best qualified responsible offeror, then negotiations will be formally terminated with the offeror. If proposals were submitted by one or more other responsible offerors, negotiations may be conducted with the other responsible offeror or responsible offerors in the order of their respective qualification ranking. The contract may be awarded to the responsible offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable.

62 Pa.C.S § 518(e).

Therefore, Commission staff will negotiate with the winning bidder for fair and reasonable hourly rates. If negotiations fail, then Commission staff will negotiate with the next highest ranked bidder, and so on, until a contract is made.

Finally, in order for an Offeror to be considered responsible for this RFP and therefore eligible for selection for best and final offers or selection for contract negotiations:

- A. The total score for the technical submittal of the Offeror's proposal must be greater than or equal to 75% of the available technical points;
- B. Further, the Issuing Office will award a contract only to an Offeror determined to be responsible in accordance with the most current version of

Commonwealth Management Directive 215.9, Contractor Responsibility Program; and

C. Bidders must comply with the requirements of the Bureau of Diversity, Inclusion, and Small Business Opportunities.

**D. Technical Scores**

<u>Bidder</u>	<u>Total</u>
McNees Wallace	1000
Eckert Seamans	811
Pietra Gallo	383
Ahmad Zafferese	314

**E. Total Scores and Final Ranking**

Combining the scores for technical proposal and the BDISBO determination, the overall scores and final rankings are as follows:

<i>Proposer</i>	<i>Technical</i>	<i>DB Score</i>	<i>Rank</i>
McNees Wallace	1000	Pass	1
Eckert Seamans	811	Pass	2
Petra Gallo	383	Pass	Eliminated
Ahmad Zaferese	314	Fail	Eliminated

**F. Discussion**

All four firms had excellent qualifications and attorneys. Petra Gallo and Ahmad Zaferese received 0 points out of 200 for staff in the Capitol region, which hurt their scores. In addition, these firms did not have staff that covered all needed legal areas of expertise, which also hurt their scores. In other words, these firms were highly qualified in the areas they practice but did not cover all practice areas needed by the Commission. Therefore, these two firms scored below the 75% technical score threshold and were eliminated from consideration. In addition, BDISBO rated Ahmad Zaferese as non-compliant because there was no agreed-to veteran business enterprise subcontractor.

Human resources staff has extensive experience with both McNees Wallace and Eckert Seamans, as both firms have in the past provided human resources legal services with the Commission. Both firms scored well in all categories, and

both firms are more than capable of providing the required legal services. Both firms received compliant status from BDSIBO as both firms agreed to the required BDISBO percentages by hiring appropriate subcontractors to perform the indicated percentages of work.

The Committee's review of the number one and number two ranked firms included a review of the PUC's history with each of the firms and its employment law practice group. The PUC's history with McNees Wallace includes 20+ years of employment law legal services and interaction with numerous McNees labor law practitioners. The McNees Labor Law and Employment team identified in the proposal includes attorneys with significant experience in the required areas and many of those identified have successfully represented the PUC in the past in various employment matters. McNees provided a detailed proposal response to the PUC's employment training and development needs. Eckert Seamans has represented the PUC for approximately the past five years, during which time there have been repeated instances of failed responsiveness, concerns about professional interactions, as well as other administrative concerns. Finally, Eckert Seamans has most recently failed to respond to a direct request for training and developmental services and did not address that requirement in their proposal. McNees had the most comprehensive proposal response, and a successful history of representing the PUC in employment matters. Eckert Seamans did not fully address the services identified in the proposal and has a history of less desirable customer service overall.

## **G. Recommendation**

The Commission approve at Public Meeting the selection of McNees Wallace to provide human resources legal services to the Commission, and direct staff to enter into final contract negotiations with them. If final contract negotiations fail with McNees Wallace, then Commission staff will then negotiate with the Eckert Seamans, in compliance with the Procurement Code for the procurement of professional services.