

October 7, 2011

Ms. Jamie Rhee
Chief Procurement Officer
Department of Procurement Services
City of Chicago – City Hall
121 North LaSalle Street, Fourth Floor
Chicago, IL 60602

Re: Post-Award Protest Regarding Contract Number 25150 to Conduct the Transportation of Deceased Persons within and for the City of Chicago

Dear Chief Procurement Officer Rhee:

GSSP Enterprise, Inc. (GSSP) thanks you and the City of Chicago for allowing us to amend our Post-Award Protest of Contract Number 25150, a contract that was awarded to Allied Services Group, Inc. (Allied Services) for the transport of deceased persons within the City of Chicago. Documents that should be considered and which are referenced in this Protest are:

1. All supplemental material provided with the Post-Award Protest filed September 12, 2011.
2. All bid proposals submitted in response to the solicitation (Available on request)
3. All Illinois Secretary of State public records pertaining to Allied Services and Allied Cleaning (previously submitted, but available again on request)
4. Fair Labor Standards Act lawsuit information in the Northern District of Illinois against Allied Cleaning (previously submitted, but available again on request)
5. Criminal conviction and Sexual Predator designation information of an Executive of Allied Cleaning, John Klaczak (previously submitted, but available again on request)
6. Vendor Selection Recommendation, dated March 9, 2011 (Attached)
7. Evaluation Summary vote tabulations of the EC (Attached)

GSSP believes that the decision you made to award the subject contract to Allied Services Group, Inc. was based on an erroneously conducted evaluation by the City Evaluation Committee, which resulted in an unlawful and unfair contract award to Allied Services. Moreover, GSSP also believes Allied Services' bid response should not have been accepted by your office considering it was submitted nine days after the deadline mandated by the expressed language of the Request for Proposal (RFP). Respectfully, in choosing to accept Allied Services' late bid, you abused your discretion as the City's primary purchasing agent and undermined the integrity of the sealed bidding process.

However, even assuming an Illinois court would grant you the power and discretion as the City's Chief Procurement Officer to accept late bid submittals, Allied Services' bid response should have never have been deemed responsive because it was incomplete, misleading and inaccurate relative to the mandates established in the RFP. In particular, Allied Services failed to disclose its relationship with Allied Cleaning Services, Inc. (Allied Cleaning) and that

company's existing litigation in a U.S. Northern District Court. Moreover, Allied Services failed to provide any client references that would evidence or offer proof of its capacity and ability to provide the transport of deceased persons on the scale required by the City of Chicago.

GSSP argues through this protest that it should have been awarded the subject contract, as it was the most responsive and responsible bidder. Further, per the language of the RFP, the City sought through the issuance of the RFP to locate and contract with a firm who possessed the expertise, experience and capability to perform the services required. GSSP believes that had there been an objective evaluation by the City's Evaluation Committee of all the vendors participating in the RFP process Allied Services, Bud Specialties, Midwest Medical Services and GSG Consultants would have all been deemed non-responsive and at a minimum, had the City not awarded the contract to GSSP, it would have elected to re-bid the RFP. However, based on GSSP's expertise, experience and capacity to perform the services requested, as evidenced by our past seven year performance of this service for the City, it is clear that GSSP was the most responsive and responsible respondent to the RFP.

Consequently, GSSP requests that you declare the current contract with Allied Services, number 25150, to be deemed null and void and determine the remaining bidders non-responsive and award this contract to GSSP. Alternatively, GSSP would request a re-issuance of the RFP for the services in question, so that this contract may be lawfully and fairly awarded.

GSSP recognizes the highly important nature of the services performed under the contract and the harm to the City that would result from an abrupt cessation of services. Thus, we are willing to enter into an emergency contract with the City of Chicago to transport deceased bodies for 180 days or for as long as it would take the City to re-issue, evaluate and award a new contract to a qualified, responsive and responsible bidder.

ALLIED SERVICES GROUP, INC. SHOULD NOT HAVE BEEN CONSIDERED FOR THE CONTRACT AWARD OWING TO ITS LATE BID SUBMISSION

The Chicago Department of Procurement Services and its Chief Procurement Officer enjoy some degree of discretion in decisions relating to the awarding of public contracts.¹ Neither the Municipal Purchasing Act² nor the Chicago Municipal Code³ prohibit the acceptance of late bids.⁴ Thus, the decision to accept Allied Services' late bid was a discretionary decision. However, the decision to accept Allied Services' late bid in this instance was an abuse of discretion.

The front page of the RFP asserted that all "proposals must be received no later than 4:00 p.m., C.S.T., on Thursday, July 8, 2010." As you are aware, the submittal date for this RFP was later amended to July 27, 2010 by the City with notice provided to all interested parties.

¹ *Williams Bros. Const. v. Public Bldg. Com'n of Kane Cnty.*, 612 N.E.2d 890, 895 (Ill. App. Ct. 1993).

² 65 ILCS 5/8-10-1 *et seq.*

³ Ch. Mun. Cd. § 2-92-010 *et seq.*

⁴ *But see* 44 Ill. Adm. Code 1400.2505(a)(2) (prohibiting the acceptance of late bids or proposals unless received prior to the contract award and the late bid or proposal would have been timely but for the fault of personnel of the Treasurer's office).

Allied Services failed to submit its bid by the July 27, 2010 deadline as required by the language of the RFP. In fact, Allied Services failed to submit its bid response on August 3, 2010 after being informed by the you that its bid proposal must be delivered to you by the close of business on August 3, 2010 to be accepted. Allied Services subsequently submitted its bid response to the City on August 4, 2010. Consequently and unfairly to the other vendors who spent the time, effort and money to meet the requirements mandated by the RFP, Allied Services was given three bits at the submittal apple before it decided on its own terms to submit its RFP to the City.

ALLIED SERVICES GROUP, INC. SHOULD NOT HAVE BEEN CONSIDERED FOR THE CONTRACT AWARD OWING TO ITS NONRESPONSIVE BID

All bids must conform to the requirements of the invitation to bid, or the RFP.⁵ Nonconforming, or nonresponsive, bids cannot be accepted. All participants in the sealed bidding process must meet the requirements of the RFP. Arbitrarily allowing certain parties to deviate from the requirements undermines the integrity of the process. To ensure equality, when a bid materially varies from the invitation, it must be rejected.⁶ If a bid contains a material variance, the purchasing agency cannot allow the mistake to be corrected after the bids have been unsealed.⁷

Allied Services Group, Inc. did not meet the requirements of Section 5.2 of the RFP to be deemed responsive during Phase I (Preliminary Proposal Assessment) of the Evaluation Committee's review of the bids based on material defects to its Cover Letter, Economic Statement, Exhibits 1 and 2, and because of Allied Services' omission of other critical information requested through the bidding process.

Allied Services Group, Inc.'s Cover Letter misrepresented its experience and background relative to its ability to transport deceased persons. Allied Services Group, Inc. also misrepresented its business relationship with Allied Cleaning Services relative to the role this company would assume in the implementation of this City contract.

Allied Services Group, Inc.'s Cover Letter included in its RFP bid response states that it "acquired" Allied Cleaning Services, Inc. in 2009. The use of the word "acquired" leads one to reasonably assume that after purchasing Allied Cleaning Services, Inc. this company and all its functions and operations were legally merged into Allied Services Group, Inc.'s operational structure and that as a result of this acquisition the two companies became one legal recognized entity in the eyes of the State of Illinois. However, upon a review of the Illinois Secretary of State's database it can quickly be determined that after being "acquired" by Allied Services, Allied Cleaning Services, Inc. remained a separate and distinct company from Allied Services Group, Inc.

⁵ *Williams Bros. Const. v. Public Bldg. Com'n of Kane Cnty.*, 612 N.E.2d at 895 (quoting *Leo Michuda & Son Co. v. Metropolitan Sanitary District of Greater Chicago*, 422 N.E.2d 1078 (Ill. App. Ct. 1981)).

⁶ *Id.* "Although a 'minor' variance does not require rejection of the proposal, a 'material' variance will require rejection of the proposal."

⁷ *Id.* See also *City of Chicago v. Mohr*, 74 N.E. 1056, 1058 (Ill. 1905) ("It is obvious that to allow the change of a bid in any material respect after the bids are open is a clear violation of the purpose, intent, and spirit of the law.")

As of this writing, Allied Cleaning maintains its own office headquarters at a separate business address than that of Allied Services. Moreover, Allied Cleaning also has its own management structure in which its President is Joseph McGown. Per the Secretary of State's database, Allied Services Group, Inc. and Allied Cleaning Services, Inc. are in fact two separate and distinct companies under Illinois Corporation law.

The fact that Allied Services and Allied Cleaning are separate legal entities is important because Allied Services' Cover Letter attempts to convey that by "acquiring" Allied Cleaning in 2009, Allied Services now possesses the specialized services to remove and transport deceased persons when in fact, this is not true. Allied Services Group, Inc. and Allied Cleaning Services are two different companies operating out of two different headquarter offices with two different addresses and two different Presidents. Thus stated, as a business, Allied Services has never transported a deceased person in its short three year history. As indicated in Allied Services Group, Inc.'s Cover Letter, any experience in the transport of deceased persons rests and resides in total with a separate business entity, known as Allied Cleaning Services, Inc.

Accordingly, Allied Services Group, Inc.'s Cover Letter fails to provide the "true" nature of its relationship with Allied Cleaning and whether Allied Cleaning is a joint partner, subcontractor or affiliate that will be used and subcontracted to satisfy the requirements and fulfillment of this City contract. Allied Services' Cover Letter also fails to provide the City with the names of the principals and executive officers involved in the management and operations of Allied Cleaning.

As previously stated, the State of Illinois' Secretary of State database indicates Joseph McGown is the President of Allied Cleaning. Moreover, it is also important to note that the Secretary of State's database does not indicate Allied Services Group, Inc. has filed for permission with the state to "do business as" Allied Cleaning Services, Inc. Therefore, there is little confusion, Allied Services and Allied Cleaning are not the same company and as a result, Allied Services should have provided the City with information regarding the nature of their relationship with Allied Cleaning pursuant to the RFP. Because Allied Services failed to provide this information in its bid and EDS, the Evaluation Committee, as well as you, should have deemed Allied Services' bid non-responsive.

Allied Services Group, Inc.'s bid should have also been deemed non-responsive because its Economic Disclosure Statement did not, and currently does not, provide the names of its own executive officers, or the nature of its relationship with Allied Cleaning.

Although Allied Services Group, Inc. provided the name of its Chief Executive Officer (John Stamps) and included the names of Allied Services Chief Operations Officer (Dan Wondaal) and its Chief Financial Officer (Mohammed AbuGhoush) in its Cover Letter to the City, these names and title of its executive officers were omitted from its EDS. Failing to provide the names of these parties was no oversight by Allied Services Group, Inc. On several separate occasions Allied Services had an opportunity to provided these names and executive officer titles in its EDS but failed to do so as required by City ordinance. Allied Services failed to provide this information when it initially submitted its Economic Disclosure Statement (EDS) on June 22, 2010 under EDS Number 7280, it failed again to provide this information in a second EDS submittal filed on August 18, 2011 under EDS Number 24305; it failed once again

to submit this information to the City when it amended its EDS under EDS Number 24305 on September 29, 2011. Because of its failure to provide this mandatory information to the Department of Procurement Services, Allied Services should have been deemed non-responsive for this bid opportunity.

Allied Services Group, Inc. also failed to inform the City of the nature of its relationship with Allied Cleaning Services, Inc. in its EDS response.

By failing to inform the City of its “true” relationship with Allied Cleaning Services, Inc., Allied Services greatly impeded and diminished the City’s ability to conduct the necessary and required due diligence of Allied Cleaning Services, Inc.’s background, as well as the background of its executive officers. It is likely that had the City known that Allied Cleaning Services, Inc. was a separate and distinctly different company from that of Allied Services Group, Inc., the City would have learned that Allied Cleaning Services, Inc. and two of its executive officers, Joseph McGown (President) and John W. Klaczak were currently defendants in a U.S. Northern District Court case for an alleged violation of the Fair Labor Standards Act, 29 U.S.C. Section 201, et. seq. Moreover, further research into this matter may have lead the City to learn that John W. Klaczak, who is a current Allied Cleaning Services executive, was also convicted on September 28, 2005 of Criminal Sexual Assault on a Minor in which the victim was between the age of 13 and 18. Further, the City would have also learned that Mr. Klaczak’s conviction was a First Degree Felony in Illinois.

The City was not allowed the opportunity to learn of these critical facts because Allied Services Group, Inc. failed to provide details of its true relationship with Allied Cleaning Services, Inc. This critical omission of required EDS requested information likely lead to the Evaluation Committee’s conclusion that Allied Services was a responsive vendor under Section 5.2 of the RFP. Alternatively, Allied Services likely did not provide this information to the City because it wanted the City to view them in the most favorable and responsible light.

Further, Allied Services should have been deemed non-responsive because it failed to provide a Company Profile (Exhibit 1) that profiled critical information about its business. The information that Allied Services did provide on its Exhibit 1 response was all related to Allied Cleaning Services, Inc., it failed to provide information relative to Allied Services. As previously argued by GSSP, Allied Services and Allied Cleaning are two separate companies under two different corporate file numbers maintained by the Illinois Secretary of State; Allied Cleaning is listed by the Secretary’s Officer under Corporate File Number 66933814 and Allied Services is listed under Corporate File Number 66047563. Each of the file numbers is an active number currently being maintained by the Secretary of State.

Allied Services should have also been deemed non-responsive because it failed to provide accurate Company Reference/Client Profile Information on the Exhibit 2 forms it submitted to the City of Chicago along with its bid response. Specifically, each Exhibit 2 that Allied Services provided to the City as proof of their ability to perform the requested service contained the contact name of an Allied Cleaning Services project manager, Dan Newton. One of these references, pertaining to the Oak Forest Police Department also failed to include the initial and final contract amounts of the work allegedly being performed for this client. A failure to provide this information surely prohibited the Evaluation Committee from determining whether Allied

Cleaning had the required experience and capacity to perform the services requested in the City's RFP. What Allied Services presented on the Exhibit 2 forms certainly did not allow the Evaluation Committee to determine it had the required experience and capacity to perform the services in question.

Page 14 of the specifications, Section 5.2(3)(B) sets forth the requirements for a respondent's Exhibit 2. It specifically states, in underlined emphasis, that "experience will not be considered unless complete reference data is provided. At a minimum, the following information must be included for each client reference." The section continues by setting forth the detailed requirements. As set forth above, Allied's Exhibit 2 failed to meet these requirements.⁸ This section of the bid specifications does not give the Evaluation Committee the discretion to ignore these requirements. However, the EC, and you in concurring with it, did ignore the requirements of the specifications, as illustrated by the attached votes Allied Services garnered for its "experience."

If the specifications provide for no discretion on a matter contained therein, and the requirements on that matter are not followed, that action is an arbitrary and unreasonable, if not capricious abuse of discretion.

⁸ In what appears to be an intentional deception by Allied, it only provided its own telephone number and email address as contact information for its references, making them more difficult to verify.

**ALLIED SERVICES GROUP, INC. SHOULD NOT HAVE BEEN AWARDED THE CONTRACT
BECAUSE IT WAS NOT THE MOST RESPONSIBLE BIDDER**

As the contract at issue is a professional contract, the Department of Procurement Services (DPS) was not obligated to award the contract to the bidder with the lowest price.⁹ When an award is made without fraud, unfair dealing, or favoritism, the award can be granted to the most responsible bidder regardless of price.¹⁰ The purchasing agency determines what criteria the bidders must meet to be considered responsible candidates.¹¹ In the instant case, DPS asserted that it was seeking solicitations from financially solvent companies possessing “expertise, experience and the capability” to perform under the contract. Those companies failing to meet this standard should have been excluded.

The Evaluation Committee failed in its evaluation of the bidders to select the most responsible bidder amongst those eligible bidders. Allied Services was not a responsible bidder because it was and is not financially solvent, nor did it demonstrate in its bid response that it has the capacity to provide the level of service required in the RFP.

GSSP has learned from Allied Services employees that they have not received payment for the first month of services provided to the City of Chicago. Further, GSSP has also learned that all employees associated with this City contract have been told that they will not receive any payment from Allied Services for an additional 30 days. Consequently, Allied Services employees are being asked to wait 60 days before they receive their first payment from this contract.

Allied Services inability to pay its workers on a timely basis is clear and convincing evidence that it did not and does not have the financial solvency to implement the terms and conditions of the City’s contract to transport deceased persons.

Moreover, had the Evaluation Committee properly reviewed the Client References provided in Exhibit 2 of Allied Services’ bid package, it would have learned that Allied Services did not have the needed experience to carry out the terms and conditions of the services requested. Per the annual revenue and expense reports provided by Allied Services in its bid package submitted to the City, Allied Cleaning had only earned \$13,741.00 in revenue associated with the transport of deceased persons in 2007, \$21,500 in 2008 and \$22,635 in 2009. (Of special note, Allied Services provided the City of Chicago with Client Reference Information for the Oak Forest Police Department in which Allied Services claims Allied Cleaning was awarded this contract in 2002. Please be aware that Allied Services was incorporated in 2008 and Allied Cleaning was incorporated in 2009. It is not possible that either of these companies was awarded the contract from the Oak Forest Police Department in 2002, neither company existed at that time).

⁹ 65 ILCS 5 § 8-10-4.

¹⁰ *Compass Health Care Plans v. Bd. of Ed.*, 617 N.E. 2d 6, 9 (Ill. App. Ct. 1992).

¹¹ *Id.*

It defies logic that the Evaluation Committee would award Allied Services with four (4) Highly Qualified votes in the area of “experience” in the transport of deceased persons when their combined revenue earned for such a service was little over \$50,000 for a combined three (3) year period. Moreover, it also defies logic that the Evaluation Committee did not challenge Allied Services on the references it provided when each reference provided was in the name of a separate and distinct third party vendor with one reference alleging that Allied Cleaning provided transport of deceased persons services dating to 2002 at a time when neither Allied Services nor Allied Cleaning existed.

As set forth above, the actions of the Evaluation Committee defy logic. Attached is the Vendor Selection Recommendation submitted to the Interim Superintendent of CPD, Terry Hillard. The recommendation is dated March 9, 2011. This is almost 8 months after the original deadline for the submission of bids, yet only 2 meetings are referenced in the report, and maybe a third could be inferred. Regardless of the number of meetings, the report illustrates that the committee did nothing other than review the proposals submitted and cast votes based upon that review. There was no independent investigation.

The fact that there was no independent verification of the information included in proposals may be justified for some types of contracts. However, due to the nature of this contract, the requirements of the specifications, and the circumstances that presented themselves even from a simple review, as was allegedly done, the failure to do so in this instance renders an award to Allied Services unlawful.

The simple review that the Evaluation Committee claims to have done should have raised questions. The EC could see that Allied was presenting financial information for a company that by its own admission was not even in existence the years referenced in the financials. The EC could see from the information submitted that Allied Services and Allied Cleaning appeared to be two separate companies. The EC could see that all experience seemed to come from Allied Cleaning as opposed to Allied Services. And, the EC could see that Allied did not comply with the mandatory requirements of Section 5.2(3)(B). The questions should have been investigated. The failure to have done so has resulted in a non-responsive and irresponsible company being awarded the contract.

Because of the aforementioned facts, evidence and the case law presented in support of GSSP’s Post-Award Protest, GSSP requests that you deem Allied Services was neither a responsive nor a responsible bidder at the time of its bid submittal, or as of this writing and consequently, render its contract with the City of Chicago null and void.

GSSP ENTERPRISES, INC. SHOULD HAVE BEEN AWARDED THE CONTRACT BECAUSE IT WAS THE MOST RESPONSIVE AND RESPONSIBLE BIDDER

Except for GSSP, none of the remaining bidder who submitted responses to this bid should have been determined responsible bidders by the Evaluation Committee. As the Vendor Selection Recommendation letter to the Interim Superintendent of Police, Terry Hillard stated, none of the remaining bidders (Midwest Medical Services and GSG Consultants had the required experience to perform the massive task of transporting more than 3,000 deceased persons each year. Amazingly, Midwest and GSG scored higher than GSSP although combined, neither had

ever transported one deceased person in a professional capacity. The Evaluation Committee should have found each of these vendors "Not Qualified" using the same rational it used to reach the conclusion that Fellowship Fleet was not qualified, none of the other vendors to submit bids were in the business of transporting dead people.

Even granting the fact that a Procurement Department generally has broad discretion in matters of this nature, the Evaluation Committee's votes, as illustrated by the attached vote sheet utilized to make the Vendor Selection Recommendation, are a conglomeration of arbitrariness, irrationality, and capriciousness. These are the hallmarks of an abuse of discretion. There can be no legitimate explanation for why Allied's proposal got 4 Qualified votes for meeting the MBE/WBE requirements when it did not meet the requirements. There can be no logical explanation for why Allied got 4 Highly Qualified votes on experience when it did not comply with the requirements of the specification. There is no rational explanation for how Allied Services' key personnel received 2 Highly Qualified and 2 Qualified votes, when Allied Services has never transported a deceased person. There is no reasonable explanation of how Allied was considered financially stable when its financials pertained to a time period when neither it, nor the separate entity Allied Cleaning, was even in existence.

In advancing this Post-Award Protest, GSSP is relying on your experience and common sense to reach the rather obvious conclusion that the Evaluation Committee failed to conduct a thorough review of bidders' evaluations. Specifically, they failed to thorough review Allied Services proposal. Had they done a thorough review of the bids the Committee would have asked and answered, who is Allied Cleaning and what will be their role in implementing this contract? Where is the Company Profile for Allied Services? How can a company that was only incorporated in 2008 (Allied Cleaning) claim to have client references and contracts dating back 2002? Is it safe to contract with Allied Services when its EDS does not tell us who their executive officers are or who the officers are of a company called Allied Cleaning? How can a company that has only earned slightly more than \$50,000 on paper perform the critical task of transporting more than 3,000 deceased persons in one year?

In the Background statement provided on page two of the subject RFP, the Department of Procurement Services states that it has "contracted out all services related to the transport of deceased persons to contractors possessing the necessary resources, expertise and experience in the area of specialty". The company that your department is referring to in this statement is GSSP. Since 2007, GSSP had performed in your department's own words with the necessary resources, expertise and experience to transport deceased persons in Chicago. However, per the committee's recommendation and scoring, GSSP was deemed the lowest qualified vendor from a pool of vendors that had never performed the service being requested by the City. Something went wrong with this selection process and it must be corrected in the interest of fairness to all the bidders involved and to maintain the integrity of the City's procurement process.

CONCLUSION

GSSP requests that after reviewing the law and the issues it has presented in this letter, that you take another look at the bid response submitted by Allied Services paying particular attention to the material defeats GSSP has presented in this letter. GSSP is confident that after your review of the bids submitted you will reach the conclusion that at a minimum a new RFP is

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necessary to protect the integrity of the City's procurement process and to maintain the faith of vendors who want to believe the City will always be fair in its awarding of City contracts.

GSSP is not angered by the outcome of the award of this contract to Allied Services, it only seeks fairness and a level playing field in which to compete and demonstrate its talents, experience, expertise and capacity to provide the City of Chicago with a critical service it so desperately requires. In this light, GSSP stands ready to assist the City on an emergency basis, to stand in and supply the City with deceased person transport services while you and your staff prepare a new RFP for re-issuance. If you should choose to re-issue a new RFP for these services, we would ask that you select evaluators from outside the Police, Fire and Budget departments so that the new evaluation process could provide all bidders with a greater sense of fairness and equity.

GSSP again thanks you for this opportunity to present its concerns and our prayer for relief and remedy and it looks forward to doing business with the City of Chicago again in the very near future.

Respectfully Submitted,

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Enclosures