

September 6, 2007

Mr. Kelly Stone
Director, North Central Texas Fusion Center
Collin County Justice Center
4300 Community Avenue
McKinney, TX 75071123123

Frank Ybarbo
Director, Collin County Purchasing
Collin County Government Center
200 South McDonald Street, Suite 230
McKinney, Texas 75069

VIA ELECTRONIC MAIL

RE: **Protest of Award of North Central Texas Fusion Systems
Data Services Subcontract RFP issued July 30, 2007 to Bassham and Associates**

Dear Mr. Stone and Mr. Ybarbo:

This document represents the protest by Sypherlink of the award concerning the Request for Proposal for North Central Texas Fusion System Data Services Subcontract issued on July 30, 2007. The grounds for this protest are:

- § Conflict of Interest by the Contractor
- § Lack of Qualification of the Winning Vendor
- § Unfair Competition and Unjustified Scoring

Given the Conflict of Interest ground, Sypherlink respectfully requests that ADB recuse itself from any element of this protest.

I. Conflict of Interest by the Contractor

On behalf of the North Central Texas Fusion System, ADB Consulting, LLC issued, evaluated, scored and awarded the Request for Proposal for North Central Texas Fusion System Data Services Subcontract to Bassham and Associates.

The Contractor, ADB Consulting, LLC, is a business registered in Nevada with two known employees—Anita Miller and Dr. James Robert Johnson. Ms. Miller and Dr. Johnson are married to one another and were the two individuals responsible for issuing, evaluating, scoring and awarding the RFP to Bassham and Associates.

Bassham and Associates is a non-legal entity created by Mr. Elbert Bassham. Mr. Bassham is the brother to Ms. Miller and brother-in-law of Dr. Johnson. On their web site (www.anitaanddrbob.com); several links, comments and pictures are presented which undeniably

illustrates the close relationship between ADB Consulting and Bassham & Associates. Ms. Miller and Dr. Johnson not only contain news of Bassham and Associates' creation, but also promote it by containing an active link to Bassham and Associates' web site. Bassham and Associates claims to have offices in the same cities as ADB Consulting, LLC lists (Santa Fe, New Mexico and Carson City, Nevada).

At no point during the RFP process did ADB disclose to Sypherlink that the other Respondent against whom it was competing was comprised of a close relative to the two individuals who make-up ADB Consulting. This relationship presents a clear conflict of interest that should have resulted in the recusal of ADB from the evaluation and scoring of the RFP submissions.

Because the funding for this RFP came from federal sources, all federal rules and regulations apply. According to the Federal Procurement Guidelines, "all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition." Given the apparent lack of qualifications possessed by Bassham and Associates as specified in the RFP, the award of the contract to that entity clearly resulted from a pre-ordained decision in conflict with the free competition requirement.

More importantly, the U.S. Department of Homeland Security Financial Grant Management Guide contains the following policy on page fifteen:

Conflicts of Interest

To avoid conflicts of interest, personnel and other officials connected with agency funded programs shall adhere to the following requirements: No official or employee of a State or unit of local government or a non-governmental recipient/subrecipient shall participate personally through decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, award, cooperative agreement, claim, controversy, or other particular matter in which award funds (including program income or other funds generated by Federally funded activities) are used, where to his/her knowledge, he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest, or has less than an arms-length transaction.

In the use of agency project funds, officials or employees of State or local units of government and non-governmental recipient/subrecipients shall avoid any action that might result in, or create the appearance of:

- § Using his or her official position for private gain;*
- § Giving preferential treatment to any person;*
- § Losing complete independence or impartiality;*
- § Making an official decision outside official channels; or*
- § Affecting adversely the confidence of the public in the integrity of the government or the program.*

For example, where a recipient of federal funds makes sub-awards under any competitive process and an actual conflict or an appearance of a conflict of interest exists, the person for whom the actual or apparent conflict of interest exists should recuse himself or herself not only from reviewing the application for which the conflict exists, but also from the evaluation of all competing applications.

Violations of the conflict of interest standards may result in criminal, civil, or administrative penalties.

Again, ADB's failure to recuse itself from evaluating and scoring this RFP is a strict violation of the DHS rules and, therefore, subject to criminal, civil, and administrative penalties. Such conduct also falls within the DHS Inspector General's mandate to investigate waste, fraud, and abuse and refer all legal violations to the U.S. Attorney's Office for possible criminal prosecution.

II. Lack of Qualification of the Winning Vendor

According to Dun & Bradstreet, Bassham and Associates is not a legally registered business in any state. As an entity operating illegally, Bassham and Associates should be disqualified. The post office box listed on its web site is the same as two other businesses – Genevieve's Beauty Salon (still active) and Bassham Land Surveying Company (no longer active). We could find no physical address for the company, so assume it operates out of the home of Elbert and Genevieve Bassham. There simply is no proof that Bassham and Associates is anything other than the name of a non-legal company that is little more than Elbert Bassham working out of his home.

While Mr. Bassham – a full-time employee of Sul Ross State University – may have experience in academic strategic planning, he has no known experience on or contracts doing data discovery, mapping, conversion, or work with the National Information Exchange Model (NIEM) as required in accompanying Statement of Work to the RFP which states:

2.3 Processing

The subcontractor shall develop or customize software that automatically converts data from the jurisdiction's format to a NIEM-compliant format. All fields shall be converted to the NIEM-compliant format unless written waiver is granted by ADB.

2.4 Output

The output of the software processing shall be a file in NIEM-compliant format as specified in the latest version of the standard at www.niem.gov at the time of subcontract award.

Each record from the jurisdiction's database shall correspond to an output file. Each field of the jurisdiction database record shall be output as a separate line in the output file that contains the following information separated by delimiters:

- *Jurisdiction-format field name*
- *Jurisdiction-format field value*
- *Jurisdiction-format code meaning (if field value is a look-up table code)*
- *NIEM-format field name*

- *NIEM-format field value*
- *NIEM-format code meaning (if field value is a look-up table code)*

2.5 Deliverables

For each database provided, the subcontractor shall deliver the software that converts the data from the jurisdiction's format to a NIEM-compliant format. The subcontractor shall also deliver a table describing the data mapping.

On its web site, Bassham and Associates contains no information that demonstrates any experience in data discovery, mapping, conversion, or NIEM expertise.

III. Unfair Competition and Unjustified Scoring

Sypherlink strongly believes that as a result of the apparent conflict of interest between ADB Consulting and Bassham & Associates, Bassham & Associates received favorable information, positioning and scoring which resulted in the ultimate award.

According to the evaluation criteria noted in section 1.6 of the RFP:

The offers will be evaluated by at least two members of ADB Consulting, LLC. The following evaluation criteria and weighting factors will be used to score the proposals.

- *20%: Written proposal - Likelihood of company being able to successfully execute contract*
- *20%: Written proposal - Soundness of the company's approach with respect to successful contract execution*
- *20%: Written proposal - Qualifications of personnel assigned with respect to successful contract execution*
- *20%: Written proposal - Number of databases company will deliver during contract*
- *20%: Two-hour interview - Credibility of company, approach and personnel as evidenced in interview*

According to the Data Services Subcontract Proposal Evaluation provided per our request, Sypherlink scoring was as follows:

Item	Evaluation Factor	Evaluation Venue	Weight	Score out of a maximum of 5	Comparison to Competition
1	Likelihood of company being able to successfully execute contract	Only the Written Proposal	20%	2	Higher
2	Soundness of company's approach	Only the Written Proposal	20%	2	Same
3	Qualifications of personnel assigned	Only the Written proposal	20%	1	Lower
4	Number of databases company with deliver	Only the Written proposal	20%	0	Lower
5	Credibility of company, approach and personnel	Only the Interview	20%	3	Higher

Item 1: Sypherlink scored only a 2 indicating that Sypherlink *has "at least one [residual] extraordinary reason to expect success"*.

Sypherlink has major projects of similar or greater requirements with the Florida Law Enforcement Exchange Initiative (FLEX); North Florida Domestic Security Task Force; The Southwest Florida Domestic Security Task Force; The Florida Regional Law Enforcement Exchange (RLEX); the FBI National Data Exchange (NDEX); Battelle Memorial Institute; and several others. According to the scale, Sypherlink should have scored much higher.

According to the stated rationale for scoring, ADB indicated the following negative remarks:

- § Solution/product-focused not services-focused
- § Data conversion engineer has no stated programming experience
- § Too independent, disregarded our rules & terminology
- § Not local law enforcement focused or experienced

Remarks 1, 2 & 4 are without merit. Many of our client engagements are specifically law enforcement-focused and completely services-focused in which we utilize our patented technology to facilitate the work performed. This is the same approach discussed with ADB. Additionally, as a result of utilizing our proven and commercially available software application, there is not a requirement for the data conversion engineer to program; and the RFP made no mention of the need to do any programming. Despite this, the individual noted, Ben Kim, does indeed have past programming experience. In fact, in his previous employment, was one of the lead software programmers for a large CAD/RMS vendor serving law enforcement.

Remark #3 is purely subjective and totally disconnected to the RFP

Item 2: Sypherlink scored only a 2 indicating that Sypherlink *has “at least one [residual] extraordinary aspect of company’s approach”*.

Sypherlink has several significant customer (noted above), partner relationships (Battelle, Raytheon, Keane, ASG, D&B to name a few), and documented case studies which are all accredited to the extraordinary aspects of our unique technology and approach. Again, according to the scale, Sypherlink should have scored much higher.

According to the stated rationale for scoring, ADB indicated the following negative remarks:

- § Product can’t be used off-the-shelf because our output requirements
- § Do not indicate understanding of problem – no mention/emphasis on testing, documentation, using software for updates, maintainability
- § No clear link between Sypherlink NIE and output required

Sypherlink NIE Gateway solution is specifically designed for the flexibility required to rapidly discover data, map it, convert it to a NIEM compliant standard, and ultimately provide required outputs as defined by Customer.

Due to Bassham and Associates apparent lack of any contract work doing data discovery, mapping, and conversion as compared to Sypherlink’s extensive experience doing those activities, it seems highly suspect and unlikely that Bassham and Associates should have received an identical score to Sypherlink in the Soundness of Company’s Approach section. Sypherlink’s approach has been used successfully on multi occasions; whereas, Bassham and Associates’ approach appears to be theoretical.

Item 3: Sypherlink scored only a “1” indicating that Sypherlink *has “no major concerns, reasonable qualifications of personnel”*.

Sypherlink feels that the scoring for this item was unfairly low and is not reflective of the qualifications of the personnel which range from former executives of US Dept of Homeland Security to nationally renowned experts in justice data sharing and NIEM. The personnel assigned have been involved in a number of similar data sharing efforts as reflected in their experience and, as a group, have successfully mitigated risk in similar projects by nature of the collaboration afforded by the Sypherlink environment.

The following negative remarks were indicated:

- No programming experience by technical guy
- Paying for Gorrell who is commercial product oriented
- Paying for Zimmer who is managing only one person

Remark #1 about Ben Kim (“technical guy”) does not accurately reflect his breadth and depth of programming experience. As a senior developer at a nationally recognized CAD/RMS vendor (Emergitech, Inc), he was responsible for a number of technical features (including low-level transport programming to provide access to state NCIC switches) used by over 500 law enforcement agencies nationwide. In addition to possessing significant development knowledge,

his experience in the law enforcement space make him one of the few individuals that can combine these talents for projects in this space.

Remark #2 about Aaron Gorell who is a nationally recognized expert in data sharing efforts does not accurately reflect the number of services engagements he been involved in with various levels of government and corporate entities including working on GJXDM and NIEM architecture and design for Dept of Justice and FBI. His ability to deliver optimized solutions by leveraging the benefits of off-the-shelf products is the antithesis of the remark listed above.

Remark #3 is irrelevant and not accurate. Eric Zimmer is overall Project Manager responsible for ensuring all aspects of project are properly managed and that the Customer's expectations are met. Additionally, a separate line item cost for Zimmer is irrelevant since the engagement is not time and resource based, but rather a fixed cost for completed data conversion interfaces.

The scoring by ADB indicates that Bassham and Associates received a higher rating than Sypherlink which is extremely unjust. The Bassham web site fails to identify anyone else on the "team" and clearly doesn't provide comparable experience and domain expertise that could justify a higher scoring than Sypherlink.

Item 4: Sypherlink scored a "0" indicating that Sypherlink will deliver less than 10 databases during the contract term.

Sypherlink also feels this scoring was arbitrarily low and doesn't give weight to some important considerations when implementing a project like this for the given timeframe. In order to realistically gauge integration efforts such as this, it is vital to know some attributes about the system being integrated (i.e. vendor, technology, etc). Though Sypherlink requested this information it was not made available making realistic estimates difficult. Sypherlink used its experience to apply a realistic risk judgment with regard to the number of databases required to be integrated.

Sypherlink's position is that companies that believe they can convert more than the number indicated in the Sypherlink proposal will have a significant risk of failure by underestimating the level of effort involved due to the lack of experience.

It is Sypherlink's belief that ADB used the fourth category – the number of databases – to artificially give Bassham and Associates enough points to surpass Sypherlink. First, by using ten or fewer databases as the quantity deserving of zero points ensured that Sypherlink received no points. Then, artificially scaling the remaining points in such a manner that gave a full five points for only providing twice as many data sources makes little sense other than as a means to ensure that Bassham would receive five points as compared to Sypherlink's zero points. A more natural distribution would have given some credit for providing databases in the one to ten ranges.

Item 5: Sypherlink scored a “3” for the two-hour interview pertaining to credibility of company, approach, and personnel.

Sypherlink feels that from a company, personnel, and approach perspective, it should have scored much higher than indicated and certainly would score higher than other vendors listed in the RFP.

Sypherlink was founded in 2001, is funded by several institutional investors, and is already a part of major state and national efforts specifically in law enforcement sharing. It has partnerships with leading organizations such as Battelle, ASG, Keane, Raytheon, Dun and Bradstreet, Acxiom, Dow Jones and Unisys and continues to drive innovation in law enforcement sharing initiatives.

Personnel include experts in the law enforcement data integration space including individuals who have worked at CAD/RMS organizations (that supply the same police department and sheriff’s offices required in the contract), individuals who have lead major data conversion efforts in several large implementations such as the Oklahoma City CAD/RMS rollout (\$15 million effort involving the conversion in aggregate of 40 million records across some of the same vendors in the North TX Fusion Center), and individuals that helped create one of the most successful data sharing initiatives in the nation in the OLLEISN program.

The approach is one endorsed by IJIS, a national vendor consortium funded by the US DOJ, Bureau of Justice Assistance, is being used to successfully integrate over 150 agencies for FL, and has been selected by the FBI NDEX initiative as the mechanism to integrate law enforcement agency data nationwide

The following negative remarks were indicated

- Expensive now and in the future – Not receptive to lowering price or working toward a lower price in the future. Already mentioned several areas that would cost more money (they do mapping; we use licensed products in the solution; they make modifications when databases change)
- Lots of overhead in working with them – want to develop a formal requirements and design document, want to use formal change management, configuration management, and collaboration tools; want us to participate in standards committees

The first remark is not an accurate representation of the meeting. Sypherlink clearly indicated that our deliverable cost will be reduced over-time based on the increased knowledgebase of pre-built mappings and efficiency realized as a result.

The second remark that indicates that proper planning and communications plans are considered to be “lots of overhead” in working with us and a perceived negative is very surprising and unusual. Experience shows that without effective processes in place to design and manage the project, the risk of the project goes up significantly and the maintenance of a delivered solution becomes untenable. Suggesting that a project like this be performed without design documents, change management processes, source code control, and effective collaboration tools would be indicative of an organization that lacks the experience and guided methodology to perform the work.

Sypherlink uses proven software development methodology standards to insure professional, quality work is performed and the customer's expectations are met and exceeded.

In summary, Sypherlink strongly believes that as a result of the apparent conflict of interest due to the family and personal relationships between the key evaluators at ADB Consulting and Bassham and Associates; Bassham & Associates received favorable information, positioning and scoring which resulted in the ultimate award.

We find it highly improper for ADB Consulting to have not recused themselves from the process once Bassham applied for the project. As the sole evaluators of the proposals, their ability to be objective is highly questionable.

Based on Bassham's web site, we also failed to find any aspect of Mr. Bassham's company that renders it qualified to do the Statement of Work in this RFP. It seems improbable that Bassham and Associates scored higher or even close to Sypherlink in at least three of the five areas (Likelihood of successful execution; qualifications of personnel assigned; credibility of company, approach and personnel).

Based on the information contained above, Sypherlink requests that the award to Bassham and Associates be rescinded due to a conflict of interest and lack of qualification. Furthermore, Sypherlink requests that it be awarded the contract as the only remaining legal business that completed the RFP process.

Sypherlink is confident that our team, approach and solution are the best overall solution to meet the requirements of this RFP. We are committed to providing the most effective and cost-efficient solution for the North Central Texas Fusion Center and look forward to working through these matters with you as swiftly as possible.

Thank you for your time and consideration.

Sincerely,

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