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Protest Decision

Matter of: 22nd Century Technologies, Inc.

Case No.: 2017-209

Posting Date: May 11, 2017

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400011888

Description: Information Security and Privacy Services

DIGEST

Protest alleging improper evaluation is denied. 22nd Century Technologies' (Century) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	09/12/2016
Amendment 1 Issued	09/20/2016
Amendment 2 Issued	10/18/2016
Amendment 3 Issued	10/18/2017

Amendment 4 Issued	11/23/2017
Amendment 5 Issued	12/09/2017
Intent to Award Posted	04/10/2017
Protest Received	04/18/2016

ANALYSIS

This Request for Proposals was issued by the State Fiscal Accountability Authority (SFAA) to establish a state term contract for Information Security and Privacy Services. The solicitation included seven lots with awards to the four highest ranked offerors in each lot. This protest concerns Lot 5, Security Assessments and Other Consulting Services. SFAA received more than five¹ proposals for Lot 5. After SFAA posted an intent to award to a single offeror, Johnstek, Inc., Century requested a debriefing by the procurement officer. She provided redacted scoring information to Century that showed it was the fifth highest ranked offeror. Century filed a protest with the CPO alleging, in essence, that one of the evaluators should have scored Century higher on one of three criteria. Allegations like these fail to state any violation of the Procurement Code. *E.g., Appeal by Coastal Rapid Public Transit Authority, Panel Case No. 1992-16.* Century's protest is therefore dismissed.

DECISION

For the foregoing reasons the protest of 22nd Century Technologies, Inc. is dismissed. By separate written determination the CPO is canceling the award to Johnstek, Inc., and returning the solicitation for Lot 5 to the procurement officer with instructions to post *all* awards at the same time.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

¹ S.C. Code Ann. Reg. 19-445.2010(D) prohibits disclosure of the number or identity of offerors throughout the sealed proposal process. Accordingly, the CPO reveals only so much information as is necessary to this decision.

Attachment 1

From: [Govt](#)
To: [itmo_protest](#)
Cc: govt@tscti.com
Subject: Protest request for SC Award: Information Security and Privacy Service_LOT 5
Date: Tuesday, April 18, 2017 10:19:14 AM
Importance: High

Good Morning,

This email is in reference to the solicitation# 5400011888 - Information Security And Privacy Service. We would like to protest the evaluation and award of Lot 5. As per the evaluation score sheet, we have found inconsistency in the evaluation of our proposal among the different evaluators. Evaluator 1 scored us at 58 points while the other 2 Evaluators scored us at 73 points each. The big difference in points by Evaluator 1 is the reason for us not receiving the award. If all the evaluators were to evaluate us fairly, we would have been awarded the contract. As per the score sheet, we are ranked the 5th with a difference of only one point from Offeror 5, the forth awardee.

As per debrief call with Ms. Donna, she mentioned that our past performance in federal sector doesn't meet the evaluation requirement. This is against the criteria defined in Solicitation and clarified in Q&A. NIST and Security standards used by State has been established by Federal government. We provided 3 strong references (Defense Language Institute, Department of Energy and Department of Labor) of customers comparable to the State of South Carolina's scope of service. Our federal experience especially Defense contracts shows our expertise in performing similar services to government clients with highly secure contracts using similar security standards which is very advantageous to the State of South Carolina.

Considering such marginal difference in points for award and major inconsistency in evaluation, we respectfully request State of South Carolina to sustain our protest and reevaluate our proposal. Looking forward to hear from you.

Thanks & regards,
Eva Gaddis-McKnight, Administrator
22nd Century Technologies, Inc.
1 Executive Drive, Suite # 285
Somerset, NJ 08873
Telephone No: 888-99-TSCTI (87284)
Fax No. 501-421-3750
Mailto: govt@tscti.com

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised November 2016)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 111.1 of the 2016 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 473, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.