

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE  
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 734-8018

MICHAEL B. SPICER  
INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

## Protest Decision

**Matter of:** 22nd Century Technologies, Inc.

**Case No.:** 2018-201

**Posting Date:** August 8, 2017

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400011888

**Description:** Information Security and Privacy Services

### DIGEST

Request for reevaluation is denied. 22nd Century Technologies' (22<sup>nd</sup> 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 a review of the procurement file, applicable law, and precedents.

### BACKGROUND

The State Fiscal Accountability Authority (SFAA) issued this Request for Proposals on September 12, 2016 to establish a statewide term contract to acquire managed security services. 22<sup>nd</sup> Century protests the award of Lot 2 which was posted on July 19, 2017.

<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	07/19/2017
Protest Received	07/28/2016

## **ANALYSIS**

22<sup>nd</sup> Century protests the evaluation scoring and requests a reevaluation of its proposal for Lot 2 for Technical Security Incident Investigation and Response Management Services as follows:

As per evaluation score sheet, we lost LOT 2 by one point as we received low scoring in Evaluation 1 as compared to Evaluation 2 & 3. We would like to request the State of South Carolina to reevaluate our response, as we have 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 which include DoD contracts shows our expertise in performing similar services using similar security standards which is very advantageous to the State of South Carolina. Considering these, we respectfully request the State to review our proposal.

In accordance with Section 11-35-2410, the decision of the evaluation committee is final and conclusive unless it is clearly erroneous, arbitrary, capricious, or contrary to law:

(A) The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law: ... Section 11-35-1530(7) (Competitive Sealed Proposals, Selection and Ranking of Prospective Offerors), Section 11-35-1530(9) (Competitive Sealed Proposals Award), ...

The standard for review in this and similar cases was established by the Procurement Review Panel in *Appeal by Coastal Rapid Public Transit Authority*, Panel Case No. 1992-16:

The Panel will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

Protest Decision, page 3

Case No. 2018-201

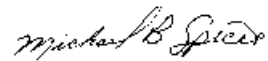
August 8, 2017

22<sup>nd</sup> Century does not allege that the evaluation was clearly erroneous, arbitrary, capricious, or contrary to law and the CPO will not substitute his judgement for that of the evaluation panel absent proof that there was a violation of the Code.

## **DECISION**

For the reasons stated above, the protest of 22<sup>nd</sup> Century Technologies, Inc. is denied.

For the Information Technology Management Office



---

Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**From:** [Pradeep Singh](#)  
**To:** [itmo\\_protest](#)  
**Cc:** [Shikha Sharma](#); [govt@tscti.com](#); [Craig, Kimber](#); [Spicer, Michael](#); [Potts, Donna](#); [Alston, Vivian](#)  
**Subject:** RE: Debrief Request - Lot 2 - RE: SC Award: INFORMATION SECURITY AND PRIVACY SERVICE  
**Date:** Friday, July 28, 2017 10:57:40 AM  
**Importance:** High

---

Good Morning,

We would like to file our protest against the award of LOT 2.

As per evaluation score sheet, we lost LOT 2 by one point as we received low scoring in Evaluation 1 as compared to Evaluation 2 & 3. We would like to request the State of South Carolina to reevaluate our response, as we have 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 which include DoD contracts shows our expertise in performing similar services using similar security standards which is very advantageous to the State of South Carolina. Considering these, we respectfully request the State to review our proposal.

Let us know if you need any more details from our side.

Thanks & Regards,  
Pradeep Singh  
22nd Century Technologies, Inc. (22nd Century)  
CMMi3 | ISO 9001:2008 | ISO 20000-1:2011 | ISO 27001:2005  
Ph. 848-702-2961

---

**From:** Potts, Donna [mailto:[dpotts@mmo.sc.gov](mailto:dpotts@mmo.sc.gov)]  
**Sent:** Friday, July 28, 2017 10:25 AM  
**To:** Pradeep Singh <[pradeeps@tscti.com](mailto:pradeeps@tscti.com)>; Alston, Vivian <[viviana@mmo.sc.gov](mailto:viviana@mmo.sc.gov)>  
**Cc:** Shikha Sharma <[shikhas@tscti.com](mailto:shikhas@tscti.com)>; [govt@tscti.com](mailto:govt@tscti.com); Craig, Kimber <[krcraig@mmo.sc.gov](mailto:krcraig@mmo.sc.gov)>; Spicer, Michael <[mspicer@mmo.sc.gov](mailto:mjspicer@mmo.sc.gov)>  
**Subject:** RE: Debrief Request - Lot 2 - RE: SC Award: INFORMATION SECURITY AND PRIVACY SERVICE

Mr. Singh,

Please submit your formal request for protest to:

Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing

- (a) by email to [protest-itmo@itmo.sc.gov](mailto:protest-itmo@itmo.sc.gov),
- (b) by facsimile at 803-737-0102, or
- (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201. [02-2B120-1]

Thank you,



**Donna J. Potts, CPPB | Procurement Manager**  
Division of Procurement Services | SC State Fiscal Accountability Authority

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised July 2017)*

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 367, 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.**