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Protest Decision

Matter of: Innovative Interfaces, Inc.

Case No.: 2018-218

Posting Date: July 9, 2018

Contracting Entity: South Carolina Commission on Higher Education

Solicitation No.: 5400013582

Description: PASCAL Shared Library Services Platform

DIGEST

Protest alleging improper communications, improper evaluation of price, and negotiated changes outside the general scope of the solicitation is denied. Innovative Interfaces' (Innovative) 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 materials in the procurement file and applicable law and precedents.

BACKGROUND

| Event | Date |
|------------------------|-------------|
| Solicitation Issued | 09/27/2017 |
| Amendment 1 Issued | 11/08/2017 |
| Intent to Award Issued | 06/06/2018 |
| Protest Received | 06/15/2018 |

The Information Technology Management Office issued this Request for Proposals on behalf of the South Carolina Commission on Higher Education's Partnership Among South Carolina Academic Libraries (PASCAL) to acquire services for a next generation Library Services Platform (LSP) in a shared consortial environment on September 27, 2017. Proposals were received on December 7, 2017 from four offerors. An Intent to Award was posted to Ex Libris USA, Inc. on June 6, 2018. Innovative filed a protest on June 15, 2018 alleging improper communications by Ex Libris, an improper evaluation of price, and an improper negotiation of price.

ANALYSIS

Innovative initially alleges that there were improper communications between Ex Libris and PASCAL prior to issuance of the solicitation. Innovative claims that:

There are a number of areas within the PASCAL RFP that are similar to other RFPs that Ex Libris has provided to libraries. When a vendor exercises undue influence over a library by providing the questions and format of an RFP, the questions will be skewed towards answers that favor that vendor, and the RFP evaluations represent scores that are more favorable towards Ex Libris because of this.

Innovative fails to identify specific examples of alleged improper communications and the perceived results. If Innovative believed that the solicitation unfairly favored Ex Libris, it could have protested the solicitation. Under Section 11-35-4210(1)(b), it is barred from raising this issue as a protest of the award:

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b)

within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added) This issue of protest is denied.

Innovative complains that:

In addition, according to Subsection (9) of Section 11-35-1530, competitive sealed proposals must take price into account when awarding contracts. The solution offered by Ex Libris was \$2,200,000 more expensive than the solution offered by Innovative, and Innovative's proposal met the requirements in the request for proposal. Innovative believes that it is not in the best interests of the State of South Carolina or in the best interests of the citizens of the State of South Carolina, to move forward with the higher priced solution.

The evaluation criteria were published in the original solicitation. Price was an initial evaluation criteria and was weighted at 20 points. Price was evaluated using a standard formula that awards the maximum points available to the lowest priced proposal. Other price proposals receive a percentage of the total points available based on their relationship to the lowest priced offer. Innovative was the lowest priced offer and received the full 20 points available for price. Ex Libris had the third highest price and received 16.68 points for price. Price was taken into consideration in accordance with the Code and the criteria published in the solicitation. This issue of protest is denied.

Innovative next alleges that

According to the RFP document, negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. Ex Libris initially submitted a bid price of \$9,898,581 but the Intent to Award letter contains an amount of \$10,433,345. A difference of \$534,764 is not insubstantial, representing a 5.4% increase in price, and must represent a change within the general scope of the request for proposals that was not submitted to the other bidders.

Innovative merely speculates that a change in price suggests there must have been a change outside the general scope of the RFP, without identifying what changes were allegedly outside

the scope. Thus, Innovative fails to articulate a basis that would support a protest of this issue. *See Appeal by United Way Ass'n of South Carolina*, Panel Case 2017-2(I) (dismissing issue that “failed to identify any changes . . . that are outside the general scope of the RFP.”).

Further, Amendment One to the solicitation included a listing by agency of the number of individuals who would require login access to the system. During negotiations these numbers increased significantly. (Attachment 2 was compiled by the CPO to verify significant changes) This does not constitute a change in the general scope of the solicitation. Another change in the Ex Libris pricing proposal included a three month provisioning fee at project implementation. This also does not constitute a change in the general scope of the solicitation. Section 11-35-1530(8)(a) provided for the negotiation of matters affecting the scope of the contract so long as the changes are within the general scope of the solicitation. The general scope of the solicitation was to acquire an LSP in a shared consortial environment. Nothing in the negotiations changed the general scope of the solicitation. This issue of protest is denied.

Innovative’s final issue of protest states:

The price evaluation score did not take this into consideration and Ex Libris would have scored lower in their overall evaluation if it had been considered. Innovative believes that not updating scores from RFP to award make the scoring invalid. Ex Libris was scored on a set of criteria that ultimately changed during the award process.

Section 11-35-1530(8)(a) requires that negotiations begin with the highest ranked offeror:

Whether price was an evaluation factor or not, the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:

(a) negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted, in the sole discretion of the procurement officer, with the second, and then the third, and

so on, ranked offerors to the level of ranking determined by the procurement officer in his sole discretion;

The highest ranked offeror is determined in accordance with Section 11-35-1530(7), which requires that proposals be evaluated using the criteria stated in the solicitation and then ranked:

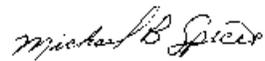
Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals.

There is no provision in the Code for the reevaluation of proposals after negotiations. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of Innovative Interfaces, Inc. is denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

DocuSign Envelope ID: 1DDFB9A2-5307-47EF-93C1-B0274207AD53



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June 15, 2018

Chief Procurement Officer
State of South Carolina
SFAA, Div. of Procurement Services, ITMO
1201 Main Street, Suite 601
Columbia, SC 29201

To Whom It May Concern:

In reference to Request for Proposal Reference Number: 5400013582

Title: PASCAL Shared Library Services Platform

Innovative Interfaces Incorporated hereby protests the award of contract number 4400018824 to Ex Libris USA Inc.

Pursuant to Section (a) of PROHIBITED COMMUNICATIONS AND DONATIONS (FEB 2015), prospective offerors must not communicate, directly or indirectly, with the Using Governmental Unit or its employees, agents or officials regarding any aspect of this procurement activity. Innovative has reason to believe the Ex Libris communicated with the PASCAL consortium prior to being awarded the contract, and that they discussed the RFP and provided the RFP template to PASCAL prior to the RFP being created. There are a number of areas within the PASCAL RFP that are similar to other RFPs that Ex Libris has provided to libraries. When a vendor exercises undue influence over a library by providing the questions and format of an RFP, the questions will be skewed towards answers that favor that vendor, and the RFP evaluations represent scores that are more favorable towards Ex Libris because of this.

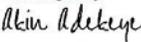
In addition, according to Subsection (9) of Section 11-35-1530, competitive sealed proposals must take price into account when awarding contracts. The solution offered by Ex Libris was \$2,200,000 more expensive than the solution offered by Innovative, and Innovative's proposal met the requirements in the request for proposal. Innovative believes that it is not in the best interests of the State of South Carolina or in the best interests of the citizens of the State of South Carolina, to move forward with the higher priced solution. PASCAL lists one of their values as "Responsible stewardship of resources; efficiency and cost savings through collective action" and choosing the vendor who is \$2,200,000 higher than the second highest scored vendor does not represent responsible stewardship of resources.

It is Innovative's understanding that negotiations with Ex Libris have already started. According to the RFP document, negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. Ex Libris initially submitted a bid price of \$9,898,581 but the Intent to Award letter contains an amount of \$10,433,345. A difference of \$534,764 is not insubstantial, representing a 5.4% increase in price, and must represent a change within the general scope of the request for proposals that was not submitted to the other bidders. The price evaluation score did not take this into consideration and Ex Libris would have scored lower in their overall evaluation if it had been considered. Innovative believes that not updating scores from RFP to award make

the scoring invalid. Ex Libris was scored on a set of criteria that ultimately changed during the award process.

Innovative should be reconsidered for the award of the contract in response to RFP 5400013582. Ex Libris, as a prospective offeror, communicated with PASCAL about multiple aspects of the procurement activity and should be barred from award because of this. In addition, PASCAL and the State should not award the contract to Ex Libris based on the invalid scoring for Ex Libris due to the \$534,764 increase in price for Ex Libris' bid. Innovative is the existing vendor; Evaluation Score Sheets repeatedly show that the evaluators believe the Innovative solution can meet the needs of PASCAL, and the proposed fees are \$2,200,000 lower than the solutions selected. Innovative has extensive experience providing solutions to consortiums and Innovative can provide a solution that will be in the best interests of the State of South Carolina and PASCAL. If Innovative is not reconsidered for the award, the RFP should be re-performed with an independently derived RFP template and the full additional scope that was provided to Ex Libris in negotiations should be included. The process has been corrupted due to additional scope not being provided to all bidders and scoring not taking into account increases in price due to that additional scope, as well as ex parte discussions taking place between Ex Libris and PASCAL.

Sincerely yours,

DocuSigned by:

A3BD8AF8AFFC452...

Akin Adekeye
General Counsel

Attachment 2

| Member Institution | Amendment 1 | RON |
|---------------------------------------|--------------------|------------|
| Aiken Technical College | 5 | 12 |
| Allen University | 6 | 5 |
| Anderson University | 2 | 25 |
| Benedict College | 8 | 12 |
| Bob Jones University | 12 | 32 |
| Central Carolina Technical College | 10 | 5 |
| Charleston Southern University | 16 | 27 |
| Citadel Military College of SC | | 27 |
| Claflin University (unknown) | | 25 |
| Clemson University | 50 | 155 |
| Coastal Carolina University | 15 | 82 |
| Coker College | 8 | 11 |
| College of Charleston | 54 | 81 |
| Columbia College (unlimited) | | 23 |
| Columbia International University | 7 | 19 |
| Converse College | | 25 |
| Denmark Technical College | 5 | 3 |
| Erskine College | | 21 |
| Florence-Darlington Technical College | 10 | 8 |
| Francis Marion University | 20 | 43 |
| Furman University | 35 | 99 |
| Greenville Technical College | 30 | 16 |
| Horry-Georgetown Technical College | 14 | 17 |
| Lander University | | 27 |
| Limestone College | 4 | 14 |
| Medical University of South Carolina | 20 | 48 |
| Midlands Technical College | 15 | 16 |
| Morris College | | 5 |
| Newberry College | 7 | 20 |
| North Greenville University | 12 | 20 |
| Northeastern Technical College | 8 | 5 |
| Orangeburg-Calhoun Technical College | 6 | 7 |
| Piedmont Technical College | 14 | 8 |
| Presbyterian College | 25 | 25 |
| South Carolina State University | 25 | 22 |

| | | |
|--------------------------------------|------------|-------------|
| Southern Wesleyan University | 8 | 18 |
| Spartanburg Community College | 12 | 16 |
| Spartanburg Methodist College | 6 | 12 |
| Technical College of the Lowcountry | 8 | 9 |
| Tri-County Technical College | 12 | 12 |
| Trident Technical College | 20 | 21 |
| University of South Carolina (Total) | 184 | 434 |
| Voorhees | 5 | 5 |
| Williamsburg Technical College | | 4 |
| Winthrop University | 40 | 59 |
| Wofford College | 18 | 25 |
| York Technical College | 6 | 13 |
| TOTAL | 762 | 1618 |

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2018)

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 2018 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.