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Protest Decision

Matter of: eSystems, Inc.

Case No.: 2017-202

Posting Date: January 18, 2017

Contracting Entity: South Carolina Department of Health and Human Services

Solicitation No.: 5400011570

Description: Cúram Support for South Carolina's Medicaid Member Enrollment & Eligibility System

DIGEST

So much of the protest of an award alleging that procurement officer improperly determined protester was non-responsive, and that successful bidder is not responsible, is denied. That part of the protest claiming the successful bidder improperly included assumptions that conditioned its proposal on negotiating alternative commercial terms, is granted. eSystems's (eSystem) amended 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

The Department of Health and Human Services (HHS) issued this Request for Proposals under a delegation from the Chief Procurement Officer. The RFP seeks

qualified Offeror's *[sic]* who are well-experienced with IBM's Cúram¹ software framework, to configure, test, and implement the Cúram Global Income Support (CGIS) module and associated data interfaces into the current HHS information technology environment....

Solicitation, p. 8. The RFP included the following discussion of the project's background:

SCDHHS procured the Member Management Technology Frame work from IBM/Cúram in November 2012. The majority of the development team was provided by Clemson University with assistance from IBM/Cúram and oversight by SCDHHS. Utilizing Cúram's Health Care Reform (HCR) product, Clemson implemented the functionality for determining eligibility and enrollment into the Modified Adjusted Gross Income (MAGI)-based coverage groups in November 2014. In January 2015, functionality to allow for annual review processing was implemented. Since that time changes each month are made to add or enhance the system functionality and improve user experience.

The legacy Medicaid Eligibility Determination System (MEDS) is operated by Clemson University. When the CGIS product is fully implemented and integrated with HCR, SCDHHS will retire MEDS. Clemson University currently hosts both the replacement and legacy eligibility systems and also hosts the development and testing environments for the replacement project.

Solicitation, p. 18. HHS expects that implementing the Cúram product will enable it to conduct eligibility determination, program enrollment, and comprehensive verification and reporting of

¹ According to IBM's website,

Cúram Software is used by health and human services, workforce services, and social security organizations around the world to deliver welfare, social insurance and both individual and employer based social programs. The Cúram Software Platform allows government and providers to focus on lowering overall program costs by ensuring that the benefits and services provided address core issues and that people become more self-sufficient.

News release, December 20, 2011, available at <http://www-03.ibm.com/press/us/en/pressrelease/36373.wss> (last viewed January 18, 2017). IBM completed its acquisition of Cúram Software in late 2011. *Id.*

non-Modified Adjusted Gross Income (non-MAGI) Medicaid applicants' and beneficiaries' assets in the most efficient and cost effective delivery model available.

The contract resulting from this solicitation will be a time and materials project, with a not-to-exceed cap based on the selected offeror's proposed and accepted budget. According to the solicitation, HHS is currently working with IBM on a "rolling" fit gap analysis between out of the box (OOTB) CGIS functionality and agency program requirements. The contractor will use the fit gap analysis to finalize levels of effort for each work package, and then execute development work against the plan accordingly.

The solicitation allowed offerors to include assumptions upon which their pricing for labor rates and estimated costs was based. Proposals were received on July 6, 2016, from eSystems, IBM,² and Infosys Public Services (IPS). All three offerors included pricing assumptions. HHS prepared a written justification determining eSystems' proposal as non-responsive on July 26, 2016. [Attachment 2] The same day it requested best and final offers from IPS and IBM. [Attachment 3] The only substantive amendment in the BAFO request was deleting the allowance for price assumptions. HHS posted its Intent to Award the contract to IPS on October 7, 2016. eSystems timely protested on October 17, 2016, and amended that protest on October 21, 2016. It alleged that its proposal should not have been disqualified, and that IPS was not a responsible offeror and its proposal was non-responsive.

<i>Event</i>	<i>Date</i>
Solicitation Issued	05/19/2016
Amendment 1 Issued	06/09/2016
Amendment 2 Issued	06/17/2016
Best and Final Offers Requested	07/26/2016
Intent to Award Posted	10/07/2016
Protest Received	10/17/2016
Protest Amended	10/21/2016

² Upon remand to the agency, HHS must consider whether IBM's development of the fit-gap analysis, and thus its knowledge of the requirements of the work, provides it with an unfair competitive advantage, thereby creating an organizational conflict of interest. If HHS finds an organizational conflict exists, it must determine how the conflict can be mitigated or avoided..

ANALYSIS

The first issue raised by eSystems alleged that HHS improperly disqualified eSystems for taking exception to the terms and conditions of the solicitation.

eSystems signed the cover page of the solicitation which included the following statement:

By signing, You agree to be bound by the terms of the Solicitation.

The second page of eSystem's transmittal letter included the following statement:

eSystems agrees to be bound by the terms of the Solicitation and hold our Offer open for a minimum of ninety (90) calendar days after the Opening Date.

eSystems included the following language in its proposal:

Certification of Compliance

eSystems Inc. hereby certifies it has read and understood the solicitation and all amendments and is in compliance with all articles, clauses, terms and conditions contained or referenced within the Solicitation 5400011570. Although every precaution has been taken in the preparation of this proposal, e-Systems does not assume any liability for damages resulting from the use of the information contained herein.

[eSystems Technical Response, Page 2] (emphasis added)

The procurement officer determined in writing that the disclaimer on page 2 of the technical response violated Regulation 19-445.2070(D)(1) and Item C of a paragraph titled Responsiveness/Improper Offers found on page 13 of the solicitation. Regulation 19-445.2070(D)(1)³ requires that:

D. Modification of Requirements by Bidder.

(1) Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the State, since to allow the bidder to impose such conditions would be

³ Regulation 19-445.2070 is no longer applicable to Requests for Proposals. However, the principle that a proposal that fails to meet the announced requirements of the State in some material respect should be rejected is still applicable. S.C. Code Ann. Reg 19-445.2095(J)(1)(b).

prejudicial to other bidders. For example, bids should be rejected in which the bidder....

(emphasis added). The cited paragraph of the solicitation states:

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

[Solicitation, Page 13] (emphasis added). It is unclear what “damages” might result from the information in eSystems’ proposal. Its intent to disclaim liability to the State for those damages, however, is apparent from the plain language eSystems chose.

eSystems also claims the procurement officer should have opened discussions with it to address concerns over the disclaimer. It argues that a single disclaimer of liability taken in conjunction with multiple claims of compliance with the terms and conditions creates an ambiguity warranting clarification.

Section 11-35-1530(6) provides:

As provided in the request for proposals, and under regulations, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors whose proposals, in the procurement officer’s sole judgment, need clarification must be accorded that opportunity.

Regulation 19-445.2095(I) authorizes discussions with offerors under Section 11-35-1530(6) as follows:

I. Discussions with Offerors

(1) Classifying Proposals.

For the purpose of conducting discussions under Section 11-35-1530(6) and item

(2) below, proposals shall be initially classified in writing as:

- (a) acceptable (i.e., reasonably susceptible of being selected for award);
- (b) potentially acceptable (i.e., reasonably susceptible of being made acceptable through discussions); or
- (c) unacceptable.

(2) Conduct of Discussions.

If discussions are conducted, the procurement officer shall exchange information with all offerors who submit proposals classified as acceptable or potentially acceptable....

Section 11-35-1530(6) commits the decision whether to conduct discussions to the procurement officer's sole judgement. By determining eSystem's proposal was non-responsive, the procurement officer effectively classified it as unacceptable. Her decision not to engage in discussions is unreviewable. *See Appeal of Medco Health Solutions, Inc., et al.*, Panel Case No. 2005-8, n. 2 ("We take pains to note here that a procuring agency is not required to seek clarification under this statute. The decision to seek clarification is, by statute, in the agency's sole discretion.... Offerors whose proposals are determined to be unresponsive without clarification should not be empowered by this decision to appeal a failure to seek clarification.")

eSystems next alleges that IPS's proposal was non-responsive to material requirements of the solicitation through the inclusion of a series of assumptions related to pricing included in its proposal. Price was an evaluation criterion in this evaluation of proposals:

2. Price Proposal: Total possible points (30)

The Offeror's average weighted rate for the entire contract, as calculated in the Pricing Tables, will be the basis for Price scoring.

[Solicitation, Page 37]

The average weighted rate was derived from labor rate tables each offeror completed:

2.0 Labor Rates Tables

The purpose of the Labor Rate pricing tables is to compute the Offeror's weighted average labor rate. There are four (4) worksheets in the Pricing Table, one (1) for each year of the contract and a Total Labor Rate worksheet, related to labor rates. The Offeror must submit these tables with no additional supporting text. Any assumptions associated with the labor rates must be addressed in the Offeror's Technical Proposal.

[Solicitation, Page 56] (Emphasis added)

The hourly rates included work performed by the Contractor and Subcontractors and were all-inclusive of wages, overhead, travel expenses, property, plant, and equipment owned or leased by the Contractor or its Subcontractors, general and administrative expenses, profit, commuting costs or lodging. Offerors were able to propose onsite and offsite rates. [Solicitation, Page 56]
The weighted average was to be computed as follows:

1.3 Weighted Average Labor Rate

Price scoring will be based on the average weighted labor rate. This rate will be calculated as follows:

- 1) For each labor category, the Offeror shall identify the percent typical use. The percent typical use is the percent of the total expected hours over the Contract year that the Offeror expects to invoice by persons in that labor category. For example, if the total labor was expected to be 10,000 hours in a contract year, and the Offeror planned for a particular labor category to consume 2,000 hours of that total, then the percent typical use would be 20%.
- 2) For each labor category, an effective rate will be computed as:
$$\text{effective rate} = (\text{onsite rate} * \text{onsite percentage}) + (\text{offsite rate} * \text{offsite percentage})$$
- 3) The yearly weighted average labor rate will include the contribution of each labor category using the formula:
$$\text{labor category contribution} = \text{percent typical use} * \text{effective rate}$$
- 4) The sum of the labor category contribution from all labor categories for each year will be the weighted average labor rate.

[Amendment 2]

According to amendment 2, this solicitation was a time and materials project, with a not-to-exceed cap based on the selected Offeror's proposed and accepted budget. The cap was established through estimated cost tables completed by the bidders:

3.0 ESTIMATED COST TABLE

The purpose of the Estimated Cost pricing tables is to compute the Offeror's estimated costs and set the contract not-to-exceed value. The Offeror must submit this table with no additional supporting text. Any assumptions associated with the labor rates must be addressed in the Offeror's Technical Proposal.

[Solicitation, Page 57] (Emphasis added)

Instructions for completing both the labor rate tables and the estimated cost tables included instructions to the offerors to address any assumptions associated with rates or estimates in the technical proposal. All three offerors submitted assumptions. The assumptions from IPS's proposal include the following:

7. Assumptions

Please find below the list of assumptions:

- IPS assumes all Terms and Conditions, including, but not limited to, limitations of liability and insurance requirements, will be finalized after vendor selection and during contract negotiations.
- If required, and in lieu of a parent guarantee or bond - as suggested in RFP Section V. Qualifications, Item 6 - IPS will be offering to provide a performance bond as security.
- The project management plan submitted as part of the RFP response is based on scope provided by SCDHHS. The MPP will be revised during the initial phase of the project to provide detailed tasks of no more than 40 hours duration.
- Testing scope will be limited to unit testing and creating test cases. Support during test execution phase is limited to defect fixes.
- SCDHHS will provide knowledgeable and sufficient Subject Matter Experts (SME) and Staff during all phases of the project.
- The rolling gap fit process may result in changes in scope requiring more effort than originally estimated

[IPS Technical Proposal, Page 190]

eSystems argues that the first assumption renders Infosys' proposal non-responsive. A responsive bidder is defined in Section 11-35-1410(7) as:

“Responsive bidder or offeror” means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

In the first assumption, IPS clearly puts that state on notice that it does not consider the terms and conditions of the solicitation binding, specifically including limitations of liability and stated

insurance requirements. While the solicitation allowed assumptions upon which the offerors based their price, and there is no argument that the terms and conditions of a contract have a direct effect on price, disclaiming all terms and conditions including choice of law clauses, insurance requirements, anti-indemnification provisions, and even the Consolidated Procurement Code under which these requirements are solicited renders that proposal non-responsive to material requirements of the solicitation. This issue of protest is affirmed.

HHS issued a request for Best and Final Offers whose single purpose was to delete the assumptions which would remove the offending language. However, Section 11-35-1530(8)(c) provides that best and final offers can only be received from responsive offerors:

the procurement officer may make changes within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers.

Since IPS was initially non-responsive, it was ineligible for redemption through the BAFO process.⁴

eSystems argues that HHS' disqualification of its proposal for taking exception to the terms and conditions of the solicitation violates the purposes and policies of the Code as expressed in Section 11-35-20.⁵ First, eSystems claims that its disqualification limits competition and thereby violates Section 11-35-20(b). Neither Section 11-35-20(b) nor anything else in the Code obliges the State to consider a non-responsive offer. Second, eSystems complains that HHS treated it unfairly, by disqualifying its proposal while ignoring the same transgression by IPS. While the solicitation allowed offerors to identify assumptions underlying their labor rates and costs, it did not authorize them to disclaim liability to the State. eSystems' proposal was disqualified because of its disclaimer, not its pricing assumptions. Thus there was no disparate treatment of offerors and no violation of Section 11-35-20(f). . This ground of protest is denied.

⁴ The procurement officer, in her sole discretion, could have avoided this situation by employing the provisions of Regulation 19-445.2095(I) to make IPS's offer responsive and then issuing the request for Best and Final Offers to remove the assumptions.

⁵ Given the CPO's finding that IPS's first pricing assumption made its offer non-responsive, this ground of protest may be moot.

eSystems next claims that the IPS proposal is non-responsive because it did not contain information demonstrating that it met the special standards of responsibility stated in the RFP. This protest ground is denied. As discussed below, IPS provided sufficient information in its proposal regarding its compliance. Even if it had not, though, it affects responsibility, not responsiveness. Information concerning responsibility, including special standards of responsibility, may be furnished or evaluated at any time prior to award. S.C. Code Ann. Reg. 19-445.2125(B).

eSystems next protests that:

The “Reference Check for Solicitation 5400011570 - Cúram” is incomplete and misleading, and does not request sufficient information for SCDHHS to determine whether the offeror has “at least one (1) IBM Cúram [CGIS] implementation” thereby preventing SCDHHS from being able to determine whether the offerors have completed at least one Cúram CGIS implementation.

The solicitation included evaluation of the offeror’s qualifications as the third evaluation criterion as follows:

<u>3. Qualifications:</u>	<u>Total possible points (25)</u>
References (corporate and/or personal), resumes, staffing, experience, financial statements, and evidence of ability to conduct business in the State	

[Solicitation, Page37]

The evaluation committee reviewed each proposal and scored each proposal against each evaluation criteria. The Panel established the standard for review in these situations. In *In re: Protest of First Sun EAP Alliance, Inc.; Appeal by First Sun EAP Alliance, Inc.*, Case 1994-11, the Procurement Review Panel reaffirmed the standard of review of claims that errors were made by evaluators as follows:

S. C. Code Ann. Section 11-35-2410 provides for the finality of determinations under the RFP process unless “clearly erroneous, arbitrary, capricious, or contrary to law.” First Sun argues that the ratings for the first three award criteria are arbitrary, capricious, and clearly erroneous. First Sun has the burden to prove its issue by a preponderance of the evidence. As the Panel had stated in previous cases, the Panel will not substitute its judgment for the judgment of the

evaluators, 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.

The Panel went on in *In re: Protest of Coastal Rapid Public Transit Authority*, Case No. 1992-16 to state that:

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.

The evaluators awarded IPS between 15 and 23 out of a possible 25 points and offered comments and observations about IPS's qualification. The evaluations were not clearly erroneous, arbitrary, capricious, or contrary to law. The CPO will not substitute his judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings. This issue of protest is denied.

eSystems' next two issues of protests are related to Infosys' qualifications as follows:

On information and belief, Infosys has not identified an IBM Cúram CGIS project that they have completed.

Section 3.1.3 of the RFP requires that key personnel must have "managed at least one (1) IBM Cúram implementation to successful completion." See Exhibit 3, p. 21. Amendment 1 to the RFP makes clear that it must be a CGIS implementation. See Exhibit 4, Q. 2. The Infosys proposal fails to meet this requirement because none of the key personnel listed in the Infosys proposal have managed an IBM Cúram CGIS implementation to successful completion. See Exhibit 9, pp. 26-34, 149. Neither the Project Manager nor the Technical Manager identified by Infosys have managed an IBM Cúram CGIS Implementation to successful completion. Furthermore, as stated in No. B.4 above, Infosys has not managed an IBM Cúram CGIS implementation to successful completion.

The offerors' qualifications were evaluated, scored, and commented on by the evaluation committee. Their evaluations were not clearly erroneous, arbitrary, capricious, or contrary to law and the CPO will not substitute his judgement for that of the evaluators. This issue of protest is denied.

The next two issues of protest allege failure of IPS to address special standards of responsibility requirements of the solicitation as follows:

The Infosys proposal further fails to meet the requirements of Section V. (Qualifications) in that none of the key personnel listed in the Infosys proposal are “developers”, as required by the Mandatory Minimum Qualifications of the RFP, and the technical director identified in the RFP does not appear to have the necessary required Cúram Certification. Exhibit 9, pp. 26-34. As noted in paragraph B.2 above, one the mandatory minimum qualification requirement for offerors is that “[a]ll Offerors developers must be trained in IBM Cúram CGIS implementation and integration products and certified through an approved certification process by IBM.

Nowhere in their proposal has Infosys demonstrated or agreed to the RFP Mandatory Minimum Qualification stated in Section V. (Qualifications) that “[a]ll Offerors developers must be trained in IBM Cúram CGIS implementation and integration products and certified through an approved certification process by IBM.

The RFP requires offerors to furnish résumés for “key personnel.” [Solicitation p. 30] Developers are not included among the definition of key personnel. [*Id.* p. 21] The RFP requires only a “descriptive list” of other proposed personnel. [*Id.* p. 30] IPS’s proposal specifically identifies the requirement for developer training and certification and indicates that it meets the requirement. [IPS Technical Proposal, ¶6.2]

Additionally, IPS’s proposal identifies IBM as a subcontractor. Regulation 19-445.2125(C)(2) allows an offeror to meet responsibility requirements through a subcontractor’s qualifications:

C. Demonstration of Responsibility.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that such contractor possesses such necessary items;
- (2) acceptable plans to subcontract for such necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

The RFP expressly contemplates that qualifications, including special standards of responsibility, may be based on the qualifications of subcontractors:

QUALIFICATION OF OFFEROR (MAR 2015)

(1) To be eligible for award, you must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify....

QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)

(a) ***

(b) Provide a detailed, narrative statement with adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation. If you intend for us to consider the qualifications of your key personnel, predecessor business(es) or subcontractor(s), explain the relationship between you and such person or entity.

QUALIFICATIONS – REQUIRED INFORMATION (MAR 2015)

Submit the following information or documentation for you and for any subcontractor (at any tier level) that you identify pursuant to the clause titled Subcontractor – Identification. Err on the side of inclusion. You represent that the information provided is complete. (a) The general history and experience of the business in providing work of similar size and scope....

CORPORATE BACKGROUND AND EXPERIENCE

The Corporate Background and Experience section must be included for the Offeror and for each Subcontractor when the Subcontractor performs ten (10) percent or more of the total work effort in hours. The State is not interested in a voluminous description of all Contracts. However, a concise but thorough description of relevant experience is desired.

Offeror (Prime Contractor) and Subcontractor information must be shown separately. In the information provided for each Subcontractor, the Offeror shall disclose the Subcontractor’s work experience (including fee-for-service Medicaid), the Subcontractor’s primary function in reference to this RFP, and the Contractor’s experience with the Subcontractor.

Section 6.5 of IPS’s technical proposal includes several pages of information concerning IBM’s qualifications and experience, including a number of completed Cúram implementations. This issue of protest is denied.

Finally, eSystems protests:

The Infosys proposal is non-responsive because it does not include a work plan. The work plan is supposed to be included in Attachment A. (“In Attachment A to this RFP, SCDHHS has included a draft copy of the work plan for CGIS module and data interfaces implementation and integration with the current SCDHHS information technology environment.”) Exhibit 3, p. 18, “Attachment for Statement of Work”). Sec. IV. (Information for Offerors to Submit -Evaluation) provides: “In addition to information requested elsewhere in this solicitation, Offerors should submit the following information for the purposes of evaluation.” Exhibit 3, p. 29 (Emphasis added). The requirement to submit a draft work plan is a material requirement of the RFP. See also the requirements of RFP sections 3.1, 3.2, 3.3, 3.5, and 3.6 regarding additional requirements regarding the draft work plan. The attachments to Infosys’ proposal are found in section 10. Section 10.1 Attachment A- Draft Work Plan states: “Please refer to **Section 5 Draft Work Plan** for the detail of Draft work plan Attachment A. Exhibit 9, p. 194 (Emphasis in original).

To the extent the requirement appears in Part IV of the RFP, it is “information for purposes of evaluation.” [Solicitation, p. 30] If the plan is deficient in some way, those shortcomings should be reflected in the evaluator’s scoring. However, it is not an issue of responsiveness.

Regardless where the requirement appears, though, IPS complied with the RFP. In section 5 of its proposal, Infosys acknowledged that it had reviewed the HHS draft work plan, and offered a two-page narrative summary including multiple recommendations for improving the plan. It also submitted a Microsoft Project file as Attachment A that incorporated the recommended changes. These materials are plainly responsive to the requirements of the RFP. This issue of protest is denied.

DECISION

IPS was non-responsive to material requirements of the solicitation and should not have been afforded the opportunity to cure that deficiency through the Best and Final process. The protest of eSystems, Inc. is granted. This solicitation was a Request for Proposals with more than two offers. In *In Re: Protest of Carter Goble Associates, Inc.*, Case 1989-25, the Procurement Review Panel prescribed the remedy in this situation as a resolicitation of the State’s requirements and award made to the responsive offeror whose proposal is most advantageous to

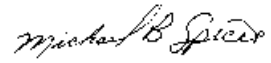
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the State, taking into consideration price and the evaluation factors set forth in the RFP. It is so ordered.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



October 21, 2016

M. Elizabeth Crum

Via E-mail and Hand Delivery

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John St. C. White
Interim Material Management Officer
and State Engineer
SC Budget & Control Board
Division of Procurement Services
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Solicitation 5400011570 – “Cúram Support for South Carolina’s Medicaid Member Enrollment & Eligibility System” (RFP) – Amended Final Protest of South Carolina Department of Health and Human Services’ (SCDHHS) Determination Finding eSystems, Inc. Non-Responsive and Issuing the Notice of Award to Infosys Public Services

Dear Mr. White:

On behalf of our client, eSystems, Inc. (eSystems), we submit an amended, final protest, pursuant to S.C. Code Ann. § 11-35-4210 (Supp. 2006), to both the determination of the South Carolina Department of Health and Human Services (SCDHHS) to find eSystems non-responsive to the RFP and the determination to issue the Notice of Intent to Award (Notice), the contract resulting from the RFP, to Infosys Public Services (IPS). The Notice was posted on October 7, 2016.

A. SCDHHS Erroneously Determined eSystems Non-Responsive. eSystems protests SCDHHS finding it was non-responsive on the grounds set forth below:

1. The SCDHHS decision to reject the eSystems proposal is in violation of the General Assembly’s purposes and policies of the Code:

“(a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the State and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;

(b) to foster effective broad based competition for public procurement within the free enterprise system;

* * *

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RECEIVED BID CONTROL

(f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;”

S.C. Code Ann. § 11-35-20. Only three vendors, eSystems, Infosys and IBM, responded to the RFP. Since only three (3) responses to the RFP were submitted, SCDHHS’ decision to reject one of the three (3) proposals does not foster broad based competition, and as indicated below, the disparate treatment of the three offerors did not ensure fair and equitable treatment of all persons responding to this solicitation.

2. On July 26, 2016, SCDHHS made its determination that eSystems’ proposal was nonresponsive to the terms and conditions referenced in Solicitation 5400011045. After it inquired of SCDHHS, not until October 10, 2016 did SCDHHS notify eSystems that its proposal was deemed non-responsive. Exhibit 1. Thus, SCDHHS determined that eSystems was non-responsive because it conditioned its response to the RFP with the following language:

Certification of Compliance

eSystems Inc. hereby certifies it has read and understood the solicitation and all amendments and is in compliance will articles, clauses, terms and conditions contained or referenced within the Solicitation 5400011570. Although every precaution has been taken in the preparation of this proposal, eSystems does not assume any liability for damages resulting from the use of the information contained herein. (Emphasis added)

Id. It is obvious from the underlined language that eSystems certified that its proposal was in compliance with the RFP. While the non-underlined language quoted above was included in the response, it was not eSystems’ intent to place any conditions on its response or to refuse to indemnify the state or limit damages in any way. In fact, eSystems signed pages 1 and 2 of the RFP specifically agreeing to be bound to the terms of the solicitation. Exhibit 2. Furthermore, on page 4 of eSystems’ Technical Response, eSystems states: “eSystems agrees to be bound by the terms of the Solicitation. . . .” Id.

SCDHHS erred by not affording eSystems the opportunity to clarify the ambiguity in its proposal (three times asserting that it agreed to be bound by the terms and conditions and one time arguably not) before deeming the eSystems response non-responsive. SCDHHS should have afforded the same opportunity to remove the offending statement as it gave to Infosys and IBM, as discussed further below. The RFP contains two standard clauses – one dealing with clarification and the other with negotiation. The clarification language provides:

“Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your Offer

or the requirements of the solicitation. Such communications may be conducted only with Offerors who have submitted an Offer which obviously conforms in all material aspects to the solicitation. Clarification of an Offer must be documented in writing and included with the Offer. Clarifications may not be used to revise an Offer or the solicitation.” [Section 11-35-1520(8); R.19-445.2080] [02-2B055-1]

Exhibit 3, RFP, p. 17. S.C. Code Ann. Reg. 19-445.2080 provides: “Apparent responsive bidder, as used in the source selection process, means a person who has submitted a bid or offer which obviously conforms in all material aspects to the solicitation. A procurement officer’s decision regarding whether a bid is apparently responsive is final unless protested.” (Emphasis added).

On July 26, 2016, the day the eSystems proposal was rejected, both Infosys and IBM were asked to provide best and final offers pursuant to S.C. Code Ann. § 11-35-1530(8) (Supp. 2006). Exhibit 6 and Exhibit 7, respectively. In its proposal, Infosys submitted assumptions. The RFP only allowed offerors to submit assumptions regarding Labor Rate Tables (VIII Bidding Schedule/Price-business proposal 2.0, p. 55) and Estimated Cost Table (3.0, p. 56). Exhibit 3. Infosys submitted six (6) assumptions not dealing with either Labor Rate Tables or Estimated Cost Table, including such things as finalizing “limitations of liability, limiting testing scope and limiting support during test execution and requiring SCDHHS to provide knowledgeable and sufficient staff. Through means of a BAFO, as discussed below, Infosys was allowed to remove the assumptions that placed conditions on SCDHHS. To the extent that eSystems’ Certification of Compliance places any limitation on the SCDHHS, eSystems should have been treated fairly and equitably and been requested to submit a BAFO. eSystems’ proposal obviously conformed in all material aspects to the RFP, and the procurement officer’s determination otherwise was in error.

On August 10, 2016, the SCDHHS, after IBM submitted its BAFO, entered into additional discussions with IBM, citing not only Reg. 19-445.2095.E, but also discussions and negotiations pursuant to § 11-35-1530(6). In part, the State wrote: “Regarding the solicitation language and collective responses above, IBM’s response regarding Disaster Recovery and negotiations are unclear.” Exhibit 8.

At worst, eSystems’ Certification of Compliance, and its “collective responses” regarding compliance with the terms and conditions of the RFP, “are unclear”. eSystems should have been afforded the same opportunity to submit a BAFO and to clarify its proposal language. To the extent that eSystems’ Certification of Compliance was unclear, eSystems should have been treated fairly and equitably and been requested to submit a BAFO. eSystems’ proposal obviously conformed in all material aspects to the RFP and the procurement officer’s determination otherwise was in error.

B. Infosys’s Proposal Is Non-responsive to the RFP. eSystems protests SCDHHS Notice of Award to Infosys on the grounds set forth below. In several material aspects, the Infosys proposal

is non-responsive and should have been rejected pursuant to Reg. 19-445.2070, as outlined below:

1. The Infosys proposal, as submitted, contained numerous assumptions that would constitute limitations as to its liability and insurance coverage required in the RFP and should be rejected pursuant to Regulation 19-445.2070. See Exhibit 9, p. 190.
2. Infosys proposal does not contain any information demonstrating that it complies with the mandatory minimum qualifications of offerors and is neither a responsive or responsible offeror.

QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)

(a) This section establishes special standards of responsibility. UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER.

- All Offerors developers must be trained in IBM Cúram CGIS implementation and integration products and certified through an approved certification process by IBM.
- Offerors must have at least one (1) completed IBM Cúram implementation project.

(b) Provide a detailed, narrative statement with adequate information to establish that you meet all the requirements stated in subparagraph (a) above. Include all appropriate documentation. If you intend for us to consider the qualifications of your key personnel, predecessor business(es) or subcontractor(s), explain the relationship between you and such person or entity. [R. 19-445.2125(F)] [05-5010-2] (Emphasis added)

Exhibit 3, p. 33.

On information and belief, the Infosys proposal fails to meet the requirements of Section V. (Qualifications) of the RFP, in that Infosys, when it submitted its proposal, had not completed at least one (1) IBM Cúram CGIS implementation project as required by the Mandatory Minimum Qualifications, as clarified by the State through Amendment 1. Exhibit 9, p. 149. Although Phase I of the project identified by Infosys in its proposal was completed in October 2013, this phase was not a CGIS implementation project. Phase II, which was a CGIS project, was not complete at the time Infosys submitted its proposal and therefore Infosys had not completed one IBM Cúram implementation project as required. See Exhibit 11, email dated October 10, 2016 from Boyle (DHS) to all DHS personnel.

Of particular note in the Qualifications sections is the all capitalized language: “UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER.” “Possess” means to have. <http://www.merriam-webster.com/dictionary/possess> The requirement for “Qualifications” is that at the time the offeror submits its proposal (July 6, 2016) it “must have at least one (1) completed IBM Cúram implementation project.” There is nothing in the Infosys proposal submitted July 6, 2016 that demonstrated that it had completed a IBM Cúram CGIS implementation project at that time.

Further, in response to RFP qualifications requirement that the offeror “must have at least one (1) completed IBM Cúram CGIA implementation project, it said yes and referred to sections 6.4.3 and 6.4.4 of its proposal. Exhibit 9, p. 149. Section 6.4.3 is redacted in the proposal sent to us. On information and belief, the response to 6.4.3 does not demonstrate that Infosys had a completed IBM Cúram CGIS project at the time it submitted its proposal. The proposal response to section 6.4.4, while listing the District of Columbia, does not indicate that the DCAS is a completed IBM Cúram CGIS project. In fact, the response to 6.4.4 does not use the words Cúram CGIS. Exhibit 9, page 158. In response to RFP 6.4.2 (Project Experience requirement), Infosys identified the District of Columbia Access System (DCAS) as part of its experience and stated that the project details are given in depth in response to section 6.3.3. Exhibit 9, page 152. Infosys’ response to section 6.3.3 states that the response is listed in the response to “section 6.4.4 Prior Projects and Contracts”. Exhibit 9, page 150. (Emphasis in original).

Section VI. “Award Criteria” sets forth the evaluation factors. In the solicitation, “Qualifications” is an award Criteria. Exhibit 3, “Evaluation Factors – Proposals, ¶ 3. Qualifications. p. 36. The Infosys proposal is both nonresponsive and based on the “Special Standards of Responsibility” for this RFP, Infosys is not a responsible vendor. The solicitation should be cancelled and resolicited.

3. The “Reference Check for Solicitation 5400011570 – Cúram” is incomplete and misleading, and does not request sufficient information for SCDHHS to determine whether the offeror has “at least one (1) IBM Cúram [CGIS] implementation” thereby preventing SCDHHS from being able to determine whether the offerors have completed at least one Cúram CGIS implementation. Exhibit 10.

4. On information and belief, Infosys has not identified an IBM Cúram CGIS project that they have completed. Section V. (Qualifications) of the RFP states, “offerors must have at least one completed IBM Cúram CGIS implementation project.” See Exhibit 3, p. 33 and Exhibit 4, Q. 95. InfoSys, in its proposal, identifies the District of Columbia Access System (DCAS) project as an IBM Cúram CGIS project for which Infosys managed through completion. However, the CGIS phase of the DCAS project was not completed at the time Infosys submitted its response to the RFP. In fact, the CGIS phase of the DCAS project was not completed and implemented until October 11, 2016, after the solicitation was awarded to Infosys on October 7, 2016. See Exhibit

11 (email announcing the startup of DCAS Release 2.0 (R2)). The first phase of the DCAS project, DCAS R1, was the Health Benefit portion implemented in October of 2013 and was not based on the Cúram CGIS module. DCAS R2 was based on the Cúram CGIS module, but was not completed at the time Infosys submitted its proposal. None of the other projects identified by Infosys in their proposal response have an IBM Cúram CGIS component.

5. Section 3.1.3 of the RFP requires that key personnel must have “managed at least one (1) IBM Cúram implementation to successful completion.” See Exhibit 3, p. 21. Amendment 1 to the RFP makes clear that it must be a CGIS implementation. See Exhibit 4, Q. 2. The Infosys proposal fails to meet this requirement because none of the key personnel listed in the Infosys proposal have managed an IBM Cúram CGIS implementation to successful completion. See Exhibit 9, pp. 26-34, 149. Neither the Project Manager nor the Technical Manager identified by Infosys have managed an IBM Cúram CGIS Implementation to successful completion. Furthermore, as stated in No. B.4 above, Infosys has not managed an IBM Cúram CGIS implementation to successful completion.

6. The Infosys proposal further fails to meet the requirements of Section V. (Qualifications) in that none of the key personnel listed in the Infosys proposal are “developers”, as required by the Mandatory Minimum Qualifications of the RFP, and the technical director identified in the RFP does not appear to have the necessary required Cúram Certification. Exhibit 9, pp. 26-34. As noted in paragraph B.2 above, one the mandatory minimum qualification requirement for offerors is that “[a]ll Offerors developers must be trained in IBM Cúram CGIS implementation and integration products and certified through an approved certification process by IBM.

7. Nowhere in their proposal has Infosys demonstrated or agreed to the RFP Mandatory Minimum Qualification stated in Section V. (Qualifications) that “[a]ll Offerors developers must be trained in IBM Cúram CGIS implementation and integration products and certified through an approved certification process by IBM.¹

8. The Infosys proposal is non-responsive because it does not include a work plan. The work plan is supposed to be included in Attachment A. (“In Attachment A to this RFP, SCDHHS has included a draft copy of the work plan for CGIS module and data interfaces implementation and integration with the current SCDHHS information technology environment.”) Exhibit 3, p. 18, “Attachment for Statement of Work”). Sec. IV. (Information for Offerors to Submit -- Evaluation) provides: “In addition to information requested elsewhere in this solicitation, Offerors should submit the following information for the purposes of evaluation.” Exhibit 3, p. 29 (Emphasis added). The requirement to submit a draft work plan is a material requirement of the RFP. See also the requirements of RFP sections 3.1, 3.2, 3.3, 3.5, and 3.6 regarding additional

¹ This list is not intended to be exhaustive of all grounds for which the Infosys proposal is non-responsive and eSystems reserves the right to supplement this list as additional information becomes available.

John St. C. White
October 21, 2016
Page 7

MCNAIR
ATTORNEYS

requirements regarding the draft work plan. The attachments to Infosys' proposal are found in section 10. Section 10.1 Attachment A – Draft Work Plan states: "Please refer to **Section 5 Draft Work Plan** for the detail of Draft work plan Attachment A. Exhibit 9, p. 194 (Emphasis in original).

CONCLUSION

For the above stated reasons, the Procurement Officer's determination that eSystems is non-responsive should be reversed, the award to Infosys should be overturned and SCDHHS should be required to re-solicit the RFP.

Sincerely,


M. Elizabeth Crum


MEC:lf

Attachment 2

① Letter from SC

5400011570 CURAM SUPPORT FOR SOUTH CAROLINA'S
MEDICAID ENROLLMENT AND ELIGIBILITY SYSTEM

JUSTIFICATION FOR
DETERMINATION OF NONRESPONSIVENESS

eSYSTEMS, INC.:

In accordance with Section 19-445-2070 (D)(1), Rejection of Individual Bids, of the Regulations of the South Carolina Consolidated Procurement Code, eSYSTEMS, Inc. (eSYSTEMS) is determined non-responsive.

eSYSTEMS has failed to comply with all terms and conditions as referenced in Solicitation 5400011045 by conditioning its response with the following language:

eSYSTEMS Technical Response page 2

Certification of Compliance

eSystems Inc. hereby certifies it has read and understood the solicitation and all amendments and is in compliance with all articles, clauses, terms and conditions contained or referenced within the Solicitation 5400011570. Although every precaution has been taken in the preparation of this proposal, eSystems does not assume any liability for damages resulting from the use of the information contained herein.

Specifically, eSYSTEMS failed to comply with the requirements stated on Page 13 of the Solicitation under, **Responsiveness/Improper Offers (June 2015) (c)**. Item C states in part, "Offers which impose conditions that modify material requirements of the Solicitation may be rejected."

eSYSTEMS has been deemed non-responsive because of conditioning its response.


7/26/16
Date

SC Dept of Health & Human Services
Using Governmental Unit

Michelle McGee
Signature

Procurement Officer
Title

Attachment 3

	State of South Carolina BEST AND FINAL OFFER REQUEST FOR PROPOSAL	Solicitation:	5400011570
		Date Issued:	07/26/2016
		Procurement Officer:	MICHELE MAHON, CPPB
		Phone:	803-898-1863
		E-Mail Address:	Michele.mahon@scdhhs.gov
		Mailing Address:	SC Department of Health and Human Services 1801 Main Street, Ste. 622 Columbia, SC 29201

DESCRIPTION: **Curam Support for South Carolina's Medicaid Member Enrollment & Eligibility System**

USING GOVERNMENTAL UNIT: **South Carolina Department of Health and Human Services**

The Term "Offer" Means Your "Bid" or "Proposal". Your offer must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior. See "Submitting Your Paper Offer or Modification" provision.

SUBMIT YOUR OFFER ELECTRONCAILLY AS FOLLOWS: michele.mahon@scdhhs.gov

SUBMIT OFFER BY (Opening Date/Time): **08/03/2016 by 17:00:00 EST** (See "Deadline For Submission Of Offer" provision)

CONFERENCE TYPE: Not Applicable DATE & TIME: <small>(As appropriate, see "Conferences - Pre-Bid/Proposal" & "Site Visit" provisions)</small>	LOCATION: Not Applicable
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AWARD & AMENDMENTS	Award will be posted on 08/12/2016 . The award, this solicitation, any amendments, and any related notices will be posted at the following web address: http://www.procurement.sc.gov
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You must submit a signed copy of this form with Your Offer. By signing, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of ninety (90) calendar days after the Opening Date.
(See "Signing Your Offer" provision.)

NAME OF OFFEROR <small>(full legal name of business submitting the offer)</small>	Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.
AUTHORIZED SIGNATURE <small>(Person must be authorized to submit binding offer to contract on behalf of Offeror.)</small>	DATE SIGNED
TITLE <small>(business title of person signing above)</small>	STATE VENDOR NO. <small>(Register to Obtain S.C. Vendor No. at www.procurement.sc.gov)</small>
PRINTED NAME <small>(printed name of person signing above)</small>	STATE OF INCORPORATION <small>(If you are a corporation, identify the state of incorporation.)</small>

OFFEROR'S TYPE OF ENTITY: (Check one)	<small>(See "Signing Your Offer" provision.)</small>
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Partnership
<input type="checkbox"/> Corporate entity (not tax-exempt)	<input type="checkbox"/> Corporation (tax-exempt)
<input type="checkbox"/> Other _____	
<input type="checkbox"/> Government entity (federal, state, or local)	

COVER PAGE - PAPER ONLY (MAR. 2015)

BEST AND FINAL OFFEROR TO SOLICITATION: (a) Offerors shall acknowledge receipt of any BAFO to this solicitation (1) by signing, completing and returning this acknowledgement. (b) By signature and acknowledgement of this BAFO to the solicitation Offeror affirms their understanding, that all terms and conditions of the solicitation which are not modified remain unchanged.

NOTE: THIS DOCUMENT REPRESENTS A “BEST AND FINAL OFFER” REQUEST AS AUTHORIZED UNDER SECTION 11-35-1530, (8), (c), OF THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE, AS AMENDED BY THE SOUTH CAROLINA GENERAL ASSEMBLY UNDER S.572.

In accordance with the section referenced above, the State of South Carolina wishes to make changes within the general scope of the request for proposals and provide your company an opportunity to submit a “best and final offer” to the State.

Best and Final Offers shall be submitted in the format as provided in this document to michele.mahon@scdhhs.gov by the time and date specified for acceptance, the solicitation number, and the name and email address of the bidder. Each Offeror must submit their response by the date and time indicated on the Cover Page of this BAFO.

QUESTIONS FROM OFFERORS (M)

(a) Any prospective offeror desiring an explanation or interpretation of the BAFO, must request it in writing. Questions must be received by the Procurement Officer no later than two (2) days prior to date noted on this Cover Page. Label any communication regarding your questions with the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a BAFO will be furnished promptly to all other prospective offerors as an Amendment to the BAFO, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the BAFO that unnecessarily or inappropriately limits full and open competition.

All questions must be submitted in writing and received by Michele Mahon no later than **08/01/2016 at 1:00 PM EST**. Email to michele.mahon@scdhhs.gov is the preferred method for submitting questions with “Questions: BAFO Curam Support for South Carolina’s Medicaid Member Enrollment & Eligibility System” as the subject of the email. Submit questions in an easily copied format such as MS Word.

The solicitation is amended as follows.

GENERAL CHANGES TO THE SOLICITATION:

1. Amend Award Posting date: **Change from: July 27, 2016. Change to: August 12, 2016.**
2. Allows the Offeror to submit an amended Price Proposal.
3. *The following is deleted from the Solicitation:*

Part 8, Bidding/Schedule/Price-Business Proposal, Section 2.0, entitled, “Labor Rates Tables,” is revised as follows:

Original Language

2.0 Labor Rates Tables

The purpose of the Labor Rate pricing tables is to compute the Offeror’s weighted average labor rate. There are four (4) worksheets in the Pricing Table, one (1) for each year of the contract and a Total Labor Rate worksheet, related to labor rates. The Offeror must submit these tables with no additional supporting text. Any assumptions associated with the labor rates must be addressed in the Offeror’s Technical Proposal.

Amended Language which deletes the last sentence of the original paragraph:

2.0 Labor Rates Tables

The purpose of the Labor Rate pricing tables is to compute the Offeror’s weighted average labor rate. There are four (4) worksheets in the Pricing Table, one (1) for each year of the contract and a Total Labor Rate worksheet, related to labor rates. The Offeror must submit these tables with no additional supporting text.

Part 8, Bidding/Schedule/Price-Business Proposal, Section 3.0, entitled, "Estimated Cost Table," is revised as follows:

Original Language

3.0 Estimated Cost Table

The purpose of the Estimated Cost pricing tables is to compute the Offeror's estimated costs and set the contract not-to-exceed value. The Offeror must submit this table with no additional supporting text. Any assumptions associated with the labor rates must be addressed in the Offeror's Technical Proposal.

Amended Language which deletes the last sentence of the original paragraph:

3.0 Estimated Cost Table

The purpose of the Estimated Cost pricing tables is to compute the Offeror's estimated costs and set the contract not-to-exceed value. The Offeror must submit this table with no additional supporting text.

INSTRUCTIONS:

The Offeror must determine whether removing the language referenced above requires that its PRICE PROPOSAL be modified.

If the Offeror determines that there is no change to its PRICE PROPOSAL, return this BAFO with the statement, "Assumptions to the Solicitation have been removed. The originally submitted price proposal is unchanged."

If the Offeror determines that there are changes to its PRICE PROPOSAL, submit your revised Price Proposal (only) according to the instructions below:

1. Offerors shall resubmit their Price Proposal stating the assumptions are removed from their Technical Proposal.
2. Offerors shall submit an amended CURAM RFP Price Proposal (Excel Document) in its entirety. The original CURAM RFP Price Proposal (Revised) can be found in the attached document labeled Attachment J.

Since all discussions prior to an award and in conjunction with the referenced section of the Consolidated Procurement Code are strictly confidential, you are reminded to communicate only with the Procurement Officer referenced on the cover page of this document.

Further, since this is an action after the original deadline for proposal submittal but prior to issuance of an Intent to Award, no "public opening" will take place. This document is not posted on the internet.

*****END OF DOCUMENT*****

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.