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THE DIVISION OF PROCUREMENT SERVICES

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MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: Boundless Spatial, Inc.

Case No.: 2017-212

Posting Date: May 18, 2017

Contracting Entity: South Carolina Emergency Management Division

Solicitation No.: 5400012528

Description: EMD New Website & Mobile Application Design

DIGEST

Protest of award alleging apparent successful bidder will not perform in accordance with the requirements of the contract is denied. Boundless Spatial's (Boundless) letter of protest is included by reference. [Attachment 1]

AUTHORITY

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

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	01/11/2017
Amendment 1 Issued	02/01/2017
Amendment 2 Issued	02/03/2017

Intent to Award Posted
Initial Protest Received

04/28/2017
05/08/2016

ANALYSIS

This Request for Proposals was issued by the State Fiscal Accountability Authority (SFAA) on behalf of the South Carolina Emergency Management Division for web design/development services to design and build a website and mobile application that will help residents and visitors prepare daily for a number of hazards to include everything from minor traffic emergencies to severe storms. Five proposals were received and evaluated by five evaluators. Boundless protests as follows:

Boundless Geospatial hereby files this PROTEST of the award given by the State of South Carolina in connection with SCEMD 5400012628, as follows:

Boundless Geospatial specializes in the commercial development and delivery of applications and systems identical to those described in the RFP. We serve leading Fortune 500 customers and Federal and State government agencies. The award that has been granted cannot possibly nor adequately provide the State of South Carolina with the proper design, completion and support of a commercial grade solution as required by the request for proposal and subsequent amendments. The design, development, testing and implementation of two native and universal mobile applications, a responsive design web application with a lengthy list of features, including WebEOC and geospatial integrations, backed by five years of 24x7x365 technical support is a significant project that involves hundreds of man hours, extensive experience with web, data and geospatial development, QA, user experience expertise and a support organization equipped to sufficiently support a government agency's needs over a multi-year term. This protest and accompanying assertions are based on Boundless' direct experience in designing, building and supporting numerous commercial and government-grade web mapping solutions like the one outlined in the bid solicitation.

Boundless hereby requests copies of any evaluation and analysis documents, communications materials, scorecards and all related materials and information that was used to determine the final award recipient.

Boundless did not amend its initial protest.

Mad Monkey was awarded this contract for the web site, mobile app and 5 years maintenance for \$125,000. The next lowest price was \$609,000 and the highest price was \$1,811,563. While it

appears, based on proposed prices, that there might have been a misunderstanding about the level of effort SCEMD was requesting, Offerors were afforded the opportunity to ask questions and seek clarification of any ambiguous or unclear requirements. The State published two amendments responding to Offeror's questions.

The solicitation included three evaluation criteria:

Qualifications / Experience - 45
Functional / Technical Requirements - 35
Price Proposal - 25

The evaluation committee reviewed each proposal and scored each proposal against each evaluation criteria. Mad Monkey was the highest ranked offeror with respect to the qualifications and technical evaluation criterion and the lowest priced offer. The Procurement Review 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.

Boundless makes no claim that the evaluation was clearly erroneous, arbitrary, capricious, or contrary to law. Mad Monkey proposed to perform the work at the price specified. The

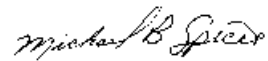
evaluation committee reviewed Mad Monkey's proposal and determined it the most advantageous to the State. The Chief Procurement Officer will not substitute his judgement for that of the evaluation committee.

To the extent Boundless protests that Mad Monkey cannot perform for the awarded price, the CPO treats the allegation as protesting Mad Monkey's responsibility. Performance is a post award contractual obligation. Speculation about an offeror's future contract performance does not raise a proper challenge to responsibility. *See, e.g., Appeal by Otis Elevator Company, Panel Case No. 2017-1.*

DECISION

For the reasons stated above, the protest of Boundless Spatial, Inc. is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Jan Isaacs](#)
To: [itmo_protest](#)
Subject: PROTEST of the award given by the State of South Carolina in connection with SCEMD 5400012628
Date: Monday, May 08, 2017 11:23:44 AM
Attachments: [image001.png](#)

Chief Procurement Officer, Information Technology Management Office
1201 Main Street, Suite 601
Columbia, SC 29201

To Whom It May Concern,

Boundless Geospatial hereby files this PROTEST of the award given by the State of South Carolina in connection with SCEMD 5400012628, as follows:

Boundless Geospatial specializes in the commercial development and delivery of applications and systems identical to those described in the RFP. We serve leading Fortune 500 customers and Federal and State government agencies. The award that has been granted cannot possibly nor adequately provide the State of South Carolina with the proper design, completion and support of a commercial grade solution as required by the request for proposal and subsequent amendments. The design, development, testing and implementation of two native and universal mobile applications, a responsive design web application with a lengthy list of features, including WebEOC and geospatial integrations, backed by five years of 24x7x365 technical support is a significant project that involves hundreds of man hours, extensive experience with web, data and geospatial development, QA, user experience expertise and a support organization equipped to sufficiently support a government agency's needs over a multi-year term. This protest and accompanying assertions are based on Boundless' direct experience in designing, building and supporting numerous commercial and government-grade web mapping solutions like the one outlined in the bid solicitation.

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Regards,

Boundless Geo
jisaacs@boundlessgeo.com
(917) 460-7200



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.

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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

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