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## Protest Decision

**Matter of:** Executive Information Systems, LLC

**Case No.:** 2019-205

**Posting Date:** February 15, 2019

**Contracting Entity:** South Carolina Department of Education

**Solicitation No.:** 5400015940

**Description:** Education Value Added System

### DIGEST

Protest alleging the evaluation was arbitrary and capricious and the successful bidder was non-responsive is denied. The protest of Executive Information Systems 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

Solicitation Issued  
Amendment 1 Issued

July 19, 2018  
August 15, 2018

Intent to Award Posted  
Initial Protest Received  
Amended Protest Received

November 16, 2018  
November 26, 2018  
December 3, 2018

The State Fiscal Accountability Authority (SFAA) issued this Solutions-Based Request for Proposals on behalf of the South Carolina Department of Education (DOE) to retain a vendor to develop value-added and growth measures of school, teacher and principal effectiveness, and create associated reporting mechanisms, to be used for the State growth portion of school accountability, and, in districts that opt-in, teacher and principal evaluations. Proposals were received from Education Analytics, Inc. (EA) and EIS on August 30, 2018. An Intent to Award was posted to EA on November 16, 2018. EIS filed its initial letter of protest on November 26, 2018 and amended its protest on December 3, 2018. EA moved to dismiss the entirety of EIS' protest on January 3, 2019. The CPO met with EIS, EA, DOE and SFAA on January 8, 2019 to hear arguments and receive information from the parties to assist with the CPO's administrative review.

## ANALYSIS

The first issue of protest raised by EIS is that:

- I. EA was provided a competitive advantage when it was permitted to submit questions after the deadline established by the State and the State responded to those questions without providing those responses to other prospective Offerors or otherwise publishing those responses in an Amendment.

Amendment 1 set a deadline for the submission of questions from prospective bidders at the close of business on August 8, 2018. EA sent an email to the procurement officer on August 23, 2018 seeking clarification of certain requirements in the solicitation:

We are preparing our bid for the Education Value-Added Solicitation, and are hoping you can answer two questions for us since we are still more than five days out from the final date for submission.

The first is about the sets of requirements to which we should be writing. It appears that there are three different sets of requirements, some of which overlap:

Page 18 - Detailed explanation of proposed solution

Page 23 - System Requirements

Page 33 - System Information

On page 33, bidders are directed to respond to all requirements from page 18 and any other requirements. Does that mean we should prepare a written response for the requirements that begin on pages 23 and 33 as part of our technical proposal as well? We see in the 2014 RFP that there was only one set of requirements, similar to those listed on page 18.

The other question is whether you are able to provide any information on the volume of help desk requests during the year.

Any information you can provide would be greatly appreciated.

The procurement officer responded on August 27, 2018:

First question:

Page 18 represents the state suggested outline for preparing the response required  
CONTENTS OF OFFER (RFP) -- SOLUTIONS BASED (JAN 2006)

The following outline may be helpful in preparing your proposal. Your offer should address each of the areas outlined below (as applicable) and provide the information requested. As your offer will be evaluated based on the information you provide, failure to provide a complete and comprehensive presentation of your solution could negatively affect our evaluation of your offer.

Page 23 represents the scope of work as described by the state This is the actual description of the work to be completed.

Page 33 Represents a generalized description of state concerns to be addressed in the contractor's response to the scope of work.

Second question:

The state has no information on the volume of calls received by the current solution vendor.

EIS argues that:

The questions were specifically directed to solicit information on how to respond to the provisions in Section II, III and IV of the RFP. The response clarified some confusing aspects of how Section II related to Sections III and IV and how the State would evaluate the Technical Proposal.

Section II of the solicitation contains Instructions to Bidders, Section III contains the Scope of Work and Section IV contains Information for Contractors to Submit. EIS alleges that the information provided by the PO cued EA to structure its proposal to respond separately to each section rather than the approach EIS choose to combine its response to sections III and IV

thereby affording EA a competitive advantage. The response from the PO simply restated what was published in the solicitation. The response to the Page 18 question was copied directly from the solicitation. Page 23 states “The scope of work of this project includes the following.” The PO’s response to the Page 23 question was “Page 23 represents the scope of work as described by the state This is the actual description of the work to be completed.” The page 33 question asks: “Does that mean we should prepare a written response for the requirements that begin on pages 23 and 33 as part of our technical proposal as well?” to which the PO responded: “Page 33 Represents a generalized description of state concerns to be addressed in the contractor's response to the scope of work.” There is nothing in the PO’s responses that would instruct EA how to prepare its response or provide it a competitive advantage. It should be noted that during exchanges with DOE about the EA questions, the PO indicated to DOE that the response would be published to all bidders in Amendment 2. An Amendment 2 was never published. However, since there was no substantive information provided, the failure to publish the response in an amendment did not disadvantage the other bidders. This issue of protest is denied.

EIS’ second issue of protest alleges eight instances that EA’s proposal was non-responsive to material, essential, and mandatory requirements of the RFP in ways that affected price, quality, quantity and delivery of services.

EIS first alleges that:

- A. EA failed to provide a Transition Plan that contained Transition Milestones with commensurate Fee Credits in violation of the RFP.

Section IV of the solicitation requested that offerors submit information in addition to that requested elsewhere in the solicitation. Paragraph 7 of this section requested offerors to:

Describe the logical work plan including Contractor’s responsibilities, the SCDE’s responsibilities, milestones, and deliverables. Include a **Transition Plan** that identifies (i) the transition activities to be performed by Contractor and the significant components, subcomponents and the conditions precedent associated with each such activity, (ii) all deliverables to be completed by Contractor, (iii) the date(s) by which each such activity or deliverable is to be completed (the **“Transition Milestones”**) and commensurate monthly percentage fee credits due the SCDE (**“Fee Credits”**) for Contactor missed Transition Milestones, (iv) the contingency or risk mitigation strategies to be employed by Contractor in the event of disruption or delay, (v) the acceptance criteria (and, if appropriate,

description of applicable testing) to be applied by Contractor in evaluating Transition Services deliverables, and (vi) transition resources to be provided by Contractor.

(emphasis added) [Solicitation, Page 36] The section of the solicitation addressing special terms and conditions included the following:

**Failure to Meet Transition Milestones.**

If Contractor fails to meet a Transition Milestone, Contractor shall pay SCDE any Fee Credits specified in the Transition Plan for such Transition Milestone.

Neither the Transition Services nor the activities and deliverables associated with individual Transition Milestones will be deemed complete until Acceptance of such activities and deliverables by SCDE, in writing.

In addition to any Fee Credits due SCDE, if Contractor fails to meet the mutually agreed upon adjusted date specified for any Transition Milestone, Contractor shall not be entitled to any further compensation for work associated with such Transition Milestone after such adjusted date.

(emphasis added) [Solicitation, Page 65]

The solicitation left it to the discretion of the Offeror to propose “commensurate” fee credits. The solicitation stated that should the Contractor fail to meet a transition milestone it would be obliged to pay SCDE “any Fee Credits specified in the Transition Plan.” There was no minimum Fee Credit required by the solicitation. In exercising the discretion granted by the solicitation, EA apparently determined that no milestone Fee Credits were appropriate. EA’s technical proposal was evaluated and accepted by the State without alteration. The inclusion of Fee Credits as part of the Transition Plan was not a material or essential requirement of the solicitation. This issue of protest is denied.

EIS’ second allegation of non-responsiveness alleges:

- B. EA improperly limited its liability with respect (sic) identity theft prevention and disclosure and reporting of such disclosures.

The solicitation included the following requirement:

For even a single knowing violation of these Identity Theft Prevention and Reporting Requirements, the Contractor agrees that the SCDE may terminate for default the contract(s) and may withhold payment(s) owed to the Contractor in an amount sufficient to pay the cost of notifying customers of unauthorized access or security breaches.

[Solicitation, Page 26]

EA responded to this requirement as follows:

EA maintains data breach insurance and employs industry standard access control, information security, and data encryption technologies in support of a proactive, safe, and confidential computing environment. We accept the SCDE terms related to termination provided EA or its subcontractors has “knowingly” disclosed or violated requirements.

[EA Technical Proposal, Page 112]

EIS argues:

EA's Proposal limiting its liability to "knowing" disclosures or violations of RFP requirements imposes conditions upon the State in violation of the Code and S.C. Reg 19-445.2070(D). Such a condition has an indisputable impact on price as assuming a greater data breach risks requires a higher cost. EA's Proposal must be rejected as non-responsive.

The solicitation stated that for “even a single knowing violation” and EA’s response does not limit its liability to the State beyond that provided for in the solicitation. This issue of protest is denied.

EIS’s third allegation of non-responsiveness alleges:

C. EA failed to meet the RFP requirements for training users.

The solicitation references training requirements in two separate parts of the scope of work. The first is part of “Implementation Management Activities,” and provides:

- Training:** The Contractor shall provide training and other help documentation and support, including the following:
- a. Context-sensitive online documentation with customized assistance for OIPE specific screens, forms, and policies designed with input from OIPE.
  - b. Availability of a help desk to request technical assistance and submit support tickets.
  - c. Compilation of manuals and other end-user support documentation tailored to OIPE’s specific configuration of the Contractor’s solution.
  - d. Provide three (3) regional one-day, on-site trainings for the end users identified by OIPE. Each of the three (3) regional trainings will be located in sites to be determined. A train-the-trainer option is also preferred.
  - e. Provide availability of a webinar to conduct additional training.

[Solicitation, Page 28 (emphasis in original)] The second training reference appears as part of “Contractor Support.” It required that the Offeror:

- b. This System must include effective documentation, online help, and other user-directed support and training mechanisms. Training shall include:
1. Must supply 6 full or 12 half day trainings in geographically diverse locations including transportation costs. (SCDE will secure free venues)
  2. The Contractor shall include effective documentation, online help, and other user-directed support and training mechanisms.
  3. The Contractor will supply a training point of contact
  4. The project and succeeding system must provide effective and adequate training to stakeholders.
  5. A training point of contact shall be provided by the Contractor for OIPE questions and support.

[Solicitation, Page 30] It is far from clear if these are separate requirements, or simply different descriptions of the contractor’s training obligation. Nevertheless, no prospective offeror inquired about this confusing language.

EIS argues:

On pages 61-62 of its Technical Proposal, EA addresses training. It states that it will provide 120 hours of in person and virtual trainings and breaks down the hours into three groups:

- 3 full day trainings regional trainings in South Carolina (24 hours)
- 16 half day trainings half day trainings that will be provided throughout the year as webinar-style presentations (64 hours)
- Virtual training bank (32 hours)

EA's proposal is limited to 3 full day regional trainings during implementation. The ongoing training only commits to 16 half day trainings via webinar. The Proposal fails to comply with the requirements set forth above regarding Contractor Support requiring 6 full day or 12 half day trainings in geographically diverse areas of the State. EA's modification to the training requirements affects price and delivery of the services and reflects a violation of a material term of the RFP. As such, EA's Proposal must be rejected.

On pages 61-62 of its Technical Proposal, EA addresses training:

EA will provide 120 hours of in-person and virtual training to designated SCDE staff, district and regional educators and administrators, and any other relevant

stakeholders who require support in understanding value-added and using the web-based reporting system.

Table 5 Training Plan

|                       |                             |          |
|-----------------------|-----------------------------|----------|
| Full Day              | 3 trainings * 8 hours each  | 24 hours |
| Half Day              | 16 trainings * 4 hours each | 64 hours |
| Virtual Training Bank | Determined by SCDE          | 32 hours |

It also states:

Also, per the RFP requirements, EA will schedule 16 half-day trainings throughout the year to ensure that any user or administrator of the value-added system is able to fully utilize all resources made available to them. These will be webinar-style presentations, where participants will receive some instruction from EA trainers, but will also have the ability to ask questions as they come up. The content of the trainings can vary over time as SCDE and EA identify new user needs or as new features come online throughout the year or over the life of the contract.

Nowhere does EA object to the training requirements or indicate that it does not intend to comply with them.

The solicitation, page 28, required the Offeror to provide three regional one-day, on-site trainings and provide availability of a webinar to conduct additional training. On page 30 the solicitation required the Offeror to provide 6 full or 12 half day trainings in geographically diverse locations including transportation costs but did not explicitly require the training be on-site. Page 28 required the Offeror to provide additional training via webinar. EA's proposal was evaluated and accepted without modification. EA's proposal was responsive to these requirements of the solicitation and this issue of protest is denied. *Cf. Appeal by Excent Corporation*, Panel Case No. 2013-2 (offer to provide a training plan encompassing all necessary training was not rendered non-responsive by descriptive model of training plan).

EIS's fourth allegation of non-responsiveness alleges:

D. EA's Proposal was non-responsive in that, upon information and belief, it does not currently possess the reporting requirements to comply with the RFP and



did not include sufficient costs in its Price Proposal for the web development necessary to comply with the reporting requirements.

EIS provides no information to support its belief that EA cannot meet the reporting requirements. The protestant bears the burden of proving its allegations by a preponderance of the evidence. EIS failed to meet its burden of proof, and this issue of protest is denied.

EIS's fifth allegation of non-responsiveness alleges:

E. EA failed to meet the RFP requirement to provide unlimited phone support.

EIS withdrew this issue of protest at the meeting.

EIS's sixth allegation of non-responsiveness alleges:

F. EA's Proposal fails to provide the required Qualifications information for its subcontractor.

EIS argues:

The Qualifications section of the RFP requires offerors to provide all of the information required in the section for subcontractors who will be performing more than 10% of the cost of the work. EA identifies Student1 as a subcontractor who will be providing significant and critical components of the work, including enterprise solution architecture, data integration, data security and privacy and identity management. EA identifies Student1 as a subcontractor in the Qualifications section of its Proposal but fails to provide all of the required information set forth in the RFP. EA's failure to comply with the RFP requirements regarding subcontractors is a material non-compliance with the RFP.

Contractor and subcontractor qualification information is requested to assist the State in making the required and subjective determination of an Offeror's Responsibility in accordance with Section 11-35-1810. EA did not include Student1's financial information explaining that, while its principals have extensive relevant experience, the company was formed in 2018 and has not been in existence long enough to have audited historical information regarding its financials. For a requirement to be material and essential it must affect price, quantity, quality, delivery, or performance of the contract. Subcontractor financial information is not a material and essential requirement of the solicitation. This issue of protest is denied.

EIS's seventh allegation of non-responsiveness alleges:

G. EA failed to meet the RFP requirement regarding Support Response Performance Levels.

EIS argues that the RFP requires a one (1) hour maximum response time for all critical issues and twenty-four (24) hour maximum response time on non-critical issues. The relevant section of the solicitation states:

Expected one (1) hour maximum response time for all critical issues and twenty-four (24) hour maximum response time on non-critical issues (“Support Response Performance Levels”).

[Solicitation, Paragraph 7.c, Page 37]

EA proposed to respond to critical issues within 1 hour and other issues within various times depending on the criticality of the issue as follows:

Table 6. Severity Levels and Response Times

| Rating                  | Initial Response Goal | Update Frequency Goal | Case Classification                                                                                                            |
|-------------------------|-----------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Critical/<br>Priority 1 | 1 Hour                | 2 Hours               | The system is 80-100% unavailable from either a technical or business perspective.                                             |
| Priority 2              | 4 Hours               | 1 Day                 | The system is 20-80% unavailable from either a technical or business perspective.                                              |
| Priority 3              | 8 Hours               | 3 Days                | The system has failed to perform a non-mission-critical task and is 1-20% unavailable.                                         |
| Priority 4              | 8 Hours               | 5 Days                | A minor problem, which does not make the production or development environment unworkable, is not related to a system failure. |
| Priority 5              | 1 Day                 | None                  | Content Development Support or “How-To” Inquiries                                                                              |

\* Response goals are in business hours & days – if a Priority 1 issue was reported in the evening we would strive to respond within the first business hour of the next business day.

EIS argues that the asterisk, limiting response times to business hours and days, renders EA’s proposal non-responsive to a material requirement of the solicitation.

The solicitation requirement indicates that a maximum one-hour response time for critical issues is “expected” but does not mandate a one-hour response time 24 hours a day, 7 days a week, every day of the year.<sup>1</sup> It is assumed that the State took this information into consideration

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<sup>1</sup> The solicitation does, however, define normal business hours as 8 a.m. – 5 p.m. Mon-Fri, Eastern Standard Time:

Describe any standards and certification held by your firm in regards to security and privacy practices. Discuss service uptime levels and describe how levels are calculated, during normal business hours (8a.m. – 5 p.m. Mon-Fri, Eastern Standard Time). Explain how the Agency is notified about scheduled outages and provide how much advance notice is issued.

during its evaluation of EA's proposal. There is no violation of a material requirement of the solicitation, and this issue of protest is denied.

EIS's eighth allegation of non-responsiveness alleges:

- H. EA failed to respond to the procurement officer's request for substantive clarification of several major aspects of its Technical Proposal rendering the Proposal non-responsive.

EIS withdrew this issue of protest.

EIS next alleges that, in five instances, the means and methods in which the evaluation process was conducted and award determination made was arbitrary and capricious and in violation of the Procurement Code.

EIS' first allegation of an arbitrary and capricious evaluation alleges:

- A. Upon information and belief, the scoring of the Evaluation Panel was flawed in that the scoring inexplicably omitted at least one of the evaluators from the scoring.

This solicitation called for a two phase evaluation. In phase one, the technical proposals and qualifications were evaluated by a panel of evaluators. The PO evaluated price using a standard formula. Phase two called for the evaluation of demonstrations. Four evaluators scored phase one of the evaluation. However, the final tabulation reflected phase one scores for only three evaluators. A hand written note on evaluator 2's phase one score sheet indicates that the evaluator had a conflict, and was unable to attend and score the demonstrations phase, so the procurement manager removed the evaluator's phase one scores from the final evaluation. This was appropriate to ensure that both Offerors received equal benefit of the available points. EIS

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(emphasis added) [Solicitation, Page 38] In its proposal EA indicates that its business hours are 8:00 AM and 6:00 PM Monday to Friday central time.

It is our intention to provide a solution with 99.99% availability between 8:00 AM and 6:00 PM Monday to Friday central time.

(emphasis added) Also on page 66 of its proposal EA indicates that the Help Desk offers coverage as follows:

Helpdesk offers coverage from 8:00 am through 6:00 pm Monday through Friday Central Time excluding the standard U.S. holidays

However, this issue was not raised as an issue of protest and the CPO lacks jurisdiction to address the matter.

also argues that a decision of this magnitude should not be left to just three evaluators. The Code does not prescribe a minimum number of evaluators. This issue of protest is denied.

EIS' second allegation of an arbitrary and capricious evaluation alleges:

- B. Upon information and belief, the Evaluation Panel was provided the Offeror's pricing information or pricing scores prior to completion of the subjective scoring of the other evaluation criteria.

EIS argues:

The Written Determination reflects that during the scoring process the evaluation panel was provided the pricing information from the Offerors and asked to consider pricing as part of the evaluation criteria. The records reflect that pricing information and/or the pricing scores may have been disclosed during the Phase I evaluation as the Written Determination lists the Price evaluation criteria as one the panel was asked to consider. If the evaluation panel was provided pricing prior to or contemporaneous with the evaluation panel's scoring of the "Propose Solution (Technical Proposal)", "Qualifications and Experience" and/or the "Demonstration" award criteria, it would create a condition where the evaluation panel's review of the Offerors' proposals would be biased.

It has long been the practice of the State, as acknowledged by the SC Procurement Review Panel, that pricing information and scores are not provided to the evaluation panel but are kept separately calculated and added to the evaluators' scores only after all of the subjective scoring of the other review criteria are completed. The obvious reason, which could have occurred in this case, is that knowledge of any pricing or price score differential could lead to bias in the evaluation of the other criteria. In this case, if the prices and price scores were not kept confidential until after the evaluation panel had scored all of the other review criteria, the panel's scores are tainted and otherwise arbitrary and capricious.

During the meeting between the parties and the CPO, the evaluators indicated that the procurement manager allocated the points for price using a standard mathematical formula and that the evaluators were not privy to the pricing information until after their final evaluation of both phases of the evaluation. EIS provided no information to the contrary. There is no violation of the Code, and this issue of protest is denied.

EIS' third allegation of an arbitrary and capricious evaluation alleges:

- C. The scoring of the Price Proposals erroneously or arbitrarily was based on only three (3) years of the potential five (5) year contract.

EIS argues:

EIS maintains the scoring that was applied for the Price Proposals was incomplete and did not reflect the total cost of ownership as provided in the RFP. The documents obtained from ITMO reflects that the scoring was based on three (3) years rather than the potential five (5) year period. This is additional evidence of the arbitrary and capricious nature of the scoring in violation of the Code.

The evaluation for Price was published in the solicitation as follows:

Price Proposal – The total cost of the proposed solution for the potential three (3) year contract term.

[Solicitation, Page 42] Section 11-35-4210(1)(b) requires:

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) While the CPO agrees that the State should evaluate the total potential value of an acquisition, this issue could have been raised as a protest of the solicitation and the CPO lacks jurisdiction to address it as a protest of the award. This issue of protest is denied.

EIS' fourth allegation of an arbitrary and capricious evaluation alleges:

- D. The total price used to calculate the EIS' score for the Price Proposal evaluation criteria included Optional Features that the RFP expressed would not be considered for evaluation purposes.

EIS argues:

The RFP invited Offerors to provide Optional Features in the Price Proposals but indicated that the pricing for the Optional Features would not be considered in the evaluation of the Price Proposals. EIS chose to provide an optional feature for Roster Verification in its Price Proposal at an annual cost of \$243,500. This was clearly delineated as an Optional Offering in its Price Proposal. Admittedly, EIS erroneously included the optional price for Roster Verification in its annual cost. However, the error was clear from the face of its Proposal. There is no question that this was intended as an Optional Feature and should not have been included in the calculation of EIS' pricing used to score the Price Proposal.

EIS is correct that an error was made in calculating its price for evaluation purposes. However, recalculating the scores with the correct pricing information does not alter the outcome. This issue of protest is dismissed as moot.

EIS' fifth allegation of an arbitrary and capricious evaluation alleges:

- E. The procurement officer engaged in improper communications with EA when forwarding a request for clarification that reflected concern about the responsiveness of the EA proposal and the response necessarily required revisions or additions to the Proposal.

EIS argues:

On October 2, 2018, the procurement officer forwarded a request for clarification of a number items requiring a response within twenty-four hours. It is unclear whether the request was an effort to engage in clarification under SC Reg. 19-445.2080 or to engage in discussions under SC Reg. 19-445-2095(1). Either way, the communications were not conducted in accordance with the Code and the applicable regulations. These requests involved several significant aspects of the RFP requirements. It reflects concern by the State as to the responsiveness of the EA Proposal and required substantive responses far beyond those contemplated by 19-445.2080. There is no evidence in the records received that the procurement officer made any effort to classify the Proposal for responsiveness and otherwise failed to comply with the requirements of 19-445.2090(1). The records received to date do not reflect that EA responded to the request for information. To the extent there was a response and further exchange between EA and the State that has not been provided in response to the FOI requests, EIS would contend that those further exchanges were conducted in violation of the Code and applicable Regulations.

The Code allows for discussions with apparent responsive bidders for the purpose of clarification to assure full understanding of the requirements of solicitation. S.C. Code Ann. § 11-35-1520(8) and R. 19-445.2095E. Regulation 19-445.2095(I) allows for the revision of proposals to resolve issues of responsiveness, uncertainties, or suspected mistakes, but only after receiving permission from the CPO and following the procedures specified in the Regulation. The key distinction between the two is that clarifications may not result in proposal revisions, only a proper interpretation of the proposal as submitted. *E.g., Appeal by Value Options*, Panel Case No. 2001-7. Discussions under R. 19-445.2095(I) are only permitted when authorized by the CPO. No such authority was requested or granted for this solicitation. Furthermore, DPS

representatives at the meeting denied any discussions were documented in the procurement file. If the communications resulted in proposal modifications, they were improper as “clarifications” under § 11-35-1520(8).<sup>2</sup>

This was a solutions-based RFP in which the State is supposed to define its current business and technical environments and define the business problem to be solved with few, if any, mandatory technical specifications. The solicitation asks the Offerors to describe their proposed solution in both process and technical detail.

Unfortunately, the solicitation includes no description of SCDE’s existing technical environment. Notably, it is silent about the “Ed-Fi Data Standard.” Ed-Fi is an open source database formatting and exchange protocol. According to its sponsoring alliance, Ed-Fi is a “set of rules for the collection, management, and organization of educational data that allows multiple systems to share their information in a seamless, actionable way.”<sup>3</sup> No vendor inquired about Ed-Fi during Q&A.

Here, the State failed to properly define its current technical environment to alert Offerors that an Ed-Fi implementation would not work. EA’s proposed solution is largely based on the Ed-Fi standard. Its proposal, though, specifically describes alternatives—including, for example, importing SCDE’s data, security, and user authentication—that do not require Ed-Fi.

After the initial scoring meeting, the PO submitted eight questions to EA seeking additional information about its proposed solution. Neither in its amended protest letter nor at the January 8 meeting did EIS specify which of EA’s answers to these questions constituted a modification to EA’s proposal. Instead, EIS characterizes the entirety of the communications as “substantive,” or generally alleges that the questions reflect concern by the State as to the responsiveness of the

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<sup>2</sup> Neither in its amended protest letter nor at the January 8 meeting did EIS specify which of EA’s answers to these questions constituted a modification to EA’s proposal. Instead, EIS characterizes the entirety of the communications as “substantive” or reflective of the State’s concern over responsiveness.

<sup>3</sup> <https://www.ed-fi.org/what-is-ed-fi/ed-fi-data-standard/> (last viewed February 15, 2019).

EA Proposal. However, the questions appear designed to resolve uncertainties about EA's proposal resulting from the State's failure to provide relevant information in the solicitation.

Six of the eight questions are directed at the technology EA proposes to implement, and how EA's solution will work in SCDE's current environment. The PO first asked: "The solution presented seems to require a direct connection to district level PowerSchool servers. Is that a requirement to implement the proposed solution?" EA's response merely provided information that was included in its proposal. For example, in its technical proposal EA wrote:

Our technical approach can be configured to load data in batch/bulk or transactional modes connecting to source South Carolina PowerSchool deployments using Ed-Fi to decrease system implementation and increase source data quality for SCDE.....

.... The approach minimizes the time to solution implementation, leveraging education sector efforts at standardized data capture, role-based SSO based security, unified data storage, and data quality enforcement through use of transactional API and bulk load implementations.

[EA Proposal p. 37]

... EA can ingest data from traditional batch and bulk load technologies....

[EA Proposal p. 39]

Our proposed system can ingest information from a wide array of sources including transactional real-time API based data feeds, batch XML based input, and traditional comma delimited and spreadsheet-based batch formats.

[EA Proposal p. 41] All of the information in EA's answer to question 1 is already in its proposal.

Question 3 was "SCDE does not currently support an Ed-Fi implementation. Will the proposed solution support a flat file data transfer to populate the system?" In addition to the language quoted above from page 41, EA wrote in its proposal:



Our approach will use standards-based collection technologies wherever possible but support source assessment data from a variety of legacy input files, typically csv, that immediately meets SCDE needs for the project.

[EA Proposal p. 42] Comma-delimited, spreadsheet-based, and CSV (comma-separated values) are synonymous with flat-file formats. On page 118, EA printed the text of the solicitation's Data Transfer requirement, followed by the statement, "EA certifies that we will comply with the above requirement." Nothing in EA's answer to Question 3 modifies information that was already in its proposal.

Question 5 asked "Can you provide the data layout required for your 'flat files'?" EA's answer repeated language quoted above, principally from page 41 of its proposal.

Questions 6 and (presumably) 8 ask about single sign-on. EA's proposal is replete with references and descriptions of its SSO solution, and specifically with respect to its federation with and access to SCDE's existing Active Directory. Nothing in EA's reply to the PO adds information not included in its proposal.

Question 7 asked, "In your technical proposal, are you asking for access to the existing system within SCDOE?" On page 37 EA noted that its solution "architecture supplies a strategic basis for interfacing to all native SCDE data sources (SIS, assessment, and SC internal systems)." On page 41 EA made clear it would provide "appropriate interfaces to SCDE internal and vendor systems...." Both statements are in context of ingesting or migrating data. Nothing in EA's answer to the PO changes the statements in its proposal.

The intent of Section 11-35-1520(8), Regulation 19-445.2080, and Regulation 19-445.2095(I) is to establish a framework through which the State can gather sufficient information to make an informed decision about a pending contractual relationship. In this case the PO characterized the request for information as a clarification under Section 11-35-1520(8). While the questions themselves look more like "discussions" under Regulation 19-445.2095(I), none of the information EA provided in response modified any of the terms in its proposal. In any event, EA's proposal as originally submitted was responsive to the material and essential requirements of the solicitation. Even if EIS were correct that the PO's action did not comply perfectly with

the process described in the Code, EA gained nothing. Its proposal was unmodified by the answers it provided. This issue of protest is dismissed.

EIS' final issue of protest alleges:

The procurement officer responsibility determination, to the extent one was made, was not conducted in accordance with the Code and was otherwise arbitrary, capricious and clearly erroneous.

EIS argues:

There is no evidence in the records provided to date that the procurement officer conducted a responsibility determination. Indeed, the Written Determination does not reference that any responsibility determination was made. EIS contends that the financial records alone provided by EA reflect that EA does not have sufficient financial capabilities to perform a contract of this size for the State of South Carolina. Furthermore, EA failed to provide any financial information for its subcontractor, Student1. The only evidence in the record concerning any type of responsibility review was a request for three references on November 15, 2018, the day before the Notice of Intent was issued. Upon information and belief, there was only one reference that was possibly checked and it is unclear whether that occurred prior to the issuance of the Notice of Intent. As such, the procurement officer failure to comply with the Code concerning a responsibility determination reflects that the award was made in violation of the Code. The procurement officer should have determined EA to be a non-responsible Offeror.

Section 11-35-1810(1) requires that the Responsibility of the bidder or offeror be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts. Regulation 19-445.2125 sets forth the factors to be considered in determining the responsibility of an Offeror:

A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the State; and

- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

While the Code requires a written determination when the procurement officer determines an Offeror is not responsible, it does not require any specific documentation other than the award to reflect the procurement officer's determination that an Offeror is responsible. The absence of specific reference to a determination of responsibility is not a violation of the Code. Neither the Code nor the Regulations establish a formula or rubric to be followed in determining financial viability leaving that to the discretion of the PO and the evaluators. EIS provides no evidence other than its opinion that EA is not financially viable. The issue of the absence of the subcontractor's financial information was addressed above. This issue of protest is denied.

## **DECISION**

For the reasons stated above, the protest of Executive Information Systems, LLC is denied.

For the Materials Management Office



---

Michael B. Spicer  
Chief Procurement Officer

**BRUNER, POWELL, WALL & MULLINS, LLC**

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AUTHOR'S E-MAIL: [WMULLINS@BRUNERPOWELL.COM](mailto:WMULLINS@BRUNERPOWELL.COM)

November 26, 2018

**VIA EMAIL [protest-itmo@itmo.sc.gov](mailto:protest-itmo@itmo.sc.gov)**

**AND HAND DELIVERY**

Michael B. Spicer, Chief Procurement Officer

Information Technology Management Office

1201 Main Street, Suite 600

Columbia, South Carolina 29201

**Re: Protest of Award of Contract for Solicitation No. 5400015940  
S.C. Department of Education – Education Value Added System  
Our File No.: 7-2835.101**

Dear Mr. Spicer:

This firm, along with the Bowers Law Office, LLC, has been retained to represent Executive Information Systems, LLC ("EIS") in connection with the above referenced solicitation. On behalf of EIS, we hereby protest the intent to award the Contract for the S.C. Department of Education – Education Value Added System to Education Analytics, Inc. ("EA") and request a hearing and/or administrative review. EIS was an Offeror in the above referenced procurement and, pursuant to S.C. Code Ann. § 11-35-4210(1), EIS has standing to pursue a protest. The protest is based upon the following factual and legal basis:

On July 19, 2018, the State Fiscal Accountability Authority ("SFAA"), Division of Procurement Services. ("DPS") issued specifications for Solicitation No. 5400015940. The solicitation sought proposals on behalf of the South Carolina Department of Education ("SCDE") to establish a new comprehensive evaluation system for schools, teachers, and principals based on multiple measures of effectiveness, which will include student growth as a significant factor. The RFP indicated that it was seeking proposals from experienced and qualified Offerors to develop value-added and growth measures of school, teacher and principal effectiveness and create associated reporting mechanisms, to be used for the State growth portion of school accountability, and, in districts that opt-in, teacher and principal evaluations.

The solicitation required prospective vendors to submit a Technical Proposal, which included qualifications and experience, and a separate Price Proposal. After submission, each Offeror's Technical Proposal was to be, first, judged by ITMO for responsiveness and, after

responsiveness was determined, evaluated and scored by an evaluation panel along with the Qualifications and Experience pursuant to the published criteria in the RFP. Presumably, the Price Proposal was to be, first, judged for responsiveness by ITMO and, after responsiveness was determined, evaluated and scored by ITMO. The responsive Offerors with a mathematical possibility of being the highest ranked Offeror after the Phase I evaluations were required to provide a Demonstration of the proposed solution to clarify or verify the contents and the representations made therein.

According to the RFP, the following evaluation factors were listed in relative order of importance with the associated possible points:

**Phase I**

- |            |                                               |                |
|------------|-----------------------------------------------|----------------|
| <b>(1)</b> | <b>Proposed Solution (Technical Proposal)</b> | <b>35 pts.</b> |
| <b>(2)</b> | <b>Price Proposal</b>                         | <b>25 pts.</b> |
| <b>(3)</b> | <b>Qualifications and Experience</b>          | <b>15 pts.</b> |

**Phase II**

- |            |                      |                |
|------------|----------------------|----------------|
| <b>(4)</b> | <b>Demonstration</b> | <b>25 pts.</b> |
|------------|----------------------|----------------|

One amendment to the solicitation was issued; and, the deadline for proposal submission was August 30, 2018. Subsequent to the submission of the proposals, ITMO transmitted the Technical Proposals to an evaluation panel for scoring. It appears that the panel was composed of at least a minimum of four persons. However, the scoring used to determine the Offeror whose proposal was most advantageous to the State was composed by using only three of the evaluators' scores. The partial panel completed its scoring; upon information and belief, ITMO applied the scoring for the Price Proposals to the scoring for the Technical Proposals to determine who would be invited to provide Demonstrations. However, the scoring for the Price Proposals were incomplete and did not reflect the total cost of ownership as provided in the RFP. When the scoring for the Price Proposals were applied to the partial panel scoring, both EA and EIS were invited to provide Demonstrations during Phase II of the solicitation process. Upon completion of the Demonstrations, the partial panel added the scores for the Demonstration to the existing scores, and EA was deemed the highest scoring Offeror. The Procurement Officer then began negotiations with EA. On November 14, 2018, negotiations with EA were concluded. The Notice of Intent to Award was issued on November 16, 2018, reflecting the proposed award to EA.

EIS filed a request with ITMO pursuant to the South Carolina Freedom of Information Act to review documents relevant to the ITMO's evaluation and determination to issue the Notice of Intent to Award to EA. Unfortunately, EIS has not had a meaningful opportunity to review all of the documents responsive to this request prior to its deadline for filing a protest of the proposed award pursuant to the Procurement Code. As such, in order to protect its right to a meaningful review of this procurement, EIS hereby protests the award by ITMO of the Contract as set forth in the Notice of Intent to Award to EA.

EIS contends the proposed award to EA is improper and contrary to the Procurement Code.

First, EIS contends that EA submitted non-responsive proposals with regards to the Technical Proposal and Price Proposal, which materially deviated from the requirements of the RFP. These deviations include but are not limited to EA's modifying the allocation of risk and limiting its liability in violation of the RFP and the Code and its failure to provide an Implementation or Transition Plan that included Fee Credits as required by the RFP. Upon information and belief, EA's Proposal failed to comply with additional material and mandatory requirements of the RFP. EA's proposal should have, therefore, been rejected.

Second, EIS contends that the means and methods in which the evaluation process was conducted and award determination made were in violation of the Procurement Code. The integrity of the entire evaluation process of the Technical Proposal and qualifications was, therefore, tainted and unfairly prejudiced EIS.

Third, EIS contends that the scoring of the Pricing Proposal was in violation of the RFP and the applicable Code and Regulations.

Fourth, the evaluation panel and ITMO did not follow the published award criteria in making their determination.

Finally, the negotiations that occurred were conducted in violation of the Procurement Code. The award to EA is, therefore, improper.

For the foregoing reasons, the notice of award to EA should be cancelled. EIS contends that EA's Proposal should have been rejected as non-responsive. With the rejection of EA, EIS, therefore, would be the highest ranked Offeror. As such, EIS is requesting the Chief Procurement Officer issue a decision to award the Contract to EIS.

EIS will rely on these arguments and such additional information as may become available through the course of our Freedom of Information Act request and further investigation. We are requesting an administrative review and hearing of this protest and look forward to addressing the issues with you in person and presenting our proof.

Sincerely,



E. Wade Mullins, III

EWM/les

cc: Butch Bowers, Esq.  
Pat Krause

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December 3, 2018

VIA EMAIL [protest-itmo@itmo.sc.gov](mailto:protest-itmo@itmo.sc.gov)

AND HAND DELIVERY

Michael B. Spicer, Chief Procurement Officer  
Information Technology Management Office  
1201 Main Street, Suite 600  
Columbia, South Carolina 29201

**Re: AMENDED Protest of Award of Contract for Solicitation No. 5400015940  
S.C. Department of Education – Education Value Added System  
Our File No.: 7-2835.101**

Dear Mr. Spicer:

As you know, this firm, along with the Bowers Law Office, LLC, has been retained to represent Executive Information Systems, LLC ("EIS") in connection with the above referenced solicitation. On behalf of EIS, we hereby submit this AMENDED protest of the intent to award the Contract for the S.C. Department of Education – Education Value Added System to Education Analytics, Inc. ("EA") and request a hearing and/or administrative review. EIS was an Offeror in the above referenced procurement. EIS was founded to serve as the exclusive reseller for SAS Institute, Inc. ("SAS") within the public contract arena. EIS provides contract management and internal operations functions to support SAS' government contracts. With regards to this procurement EIS proposed to subcontract the services scope of work to SAS. As an Offeror and, pursuant to S.C. Code Ann. § 11-35-4210(1), EIS has standing to pursue a protest.

EIS understands the recent CPO policy regarding administrative reviews without a hearing; however, in this instance, EIS maintains that it would be in the best interest of SCDE and the State to conduct a hearing to allow for the presentation of facts, evidence and arguments relating to the protest grounds set forth below. To the extent that the CPO determines not to conduct a hearing or meeting with the interested parties, EIS requests that the CPO provide it with a copy of all additional information considered by the CPO as part of the administrative review upon receipt so that EIS would have an opportunity to review and provide any additional information in response in order to ensure its due process rights are protected. Moreover, EIS would also request to be notified of any deadlines for the submission of evidence and other information in submitted in

response to the protest prior to any decision rendered on the protest. The protest is based upon the following factual and legal basis:

### **BACKGROUND**

On July 19, 2018, the State Fiscal Accountability Authority ("SFAA"), Division of Procurement Services. ("DPS") issued specifications for Solicitation No. 5400015940. The solicitation sought proposals on behalf of the South Carolina Department of Education ("SCDE") to establish a new comprehensive evaluation system for schools, teachers, and principals based on multiple measures of effectiveness, which will include student growth as a significant factor. The RFP indicated that it was seeking proposals from experienced and qualified Offerors to develop value-added and growth measures of school, teacher and principal effectiveness and create associated reporting mechanisms, to be used for the State growth portion of school accountability, and, in districts that opt-in, teacher and principal evaluations.

The solicitation required prospective vendors to submit a Technical Proposal, which included qualifications and experience, and a separate Price Proposal. After submission, each Offeror's Technical Proposal was to be, first, judged by ITMO for responsiveness and, after responsiveness was determined, evaluated and scored by an evaluation panel along with the Qualifications and Experience pursuant to the published criteria in the RFP. Presumably, in accordance with established ITMO policy, the RFP contemplated that the Price Proposal was to be, first, judged for responsiveness by ITMO and, after responsiveness was determined, evaluated and scored by ITMO. The responsive Offerors with a mathematical possibility of being the highest ranked Offeror after the Phase I evaluations were required to provide a Demonstration of the proposed solution to clarify or verify the contents and the representations made therein.

Section III, Scope of Work/Specifications of the RFP set forth the scope and detailed requirements of the Contract, including numerous mandatory requirements. Section IV, Information for Contractors to Submit, specified all of the information that was required to be submitted with the proposal. Section IV clearly admonished Offerors that proposals which imposed conditions that modified the requirements of the solicitation or failed to respond to the information requested risked being deemed non-responsive and rejected.

Section VIII Price-Business Proposal set forth the requirements for the submission of the Business Proposal and directed the Offerors to provide all costs to be incurred for the services requested in the solicitation. The solicitation required the Business Proposal to include pricing for the five (5) year total potential value of the contract on an annual basis. The solicitation required the cost for each year to be listed and then totaled to state the total cost for the potential five (5) year period. The RFP also provided the Offerors to submit optional features that were not intended to be considered in the evaluated total cost.



According to the RFP, the following evaluation factors were listed in relative order of importance with the associated possible points:

**Phase I**

- |     |                                               |                |
|-----|-----------------------------------------------|----------------|
| (1) | <b>Proposed Solution (Technical Proposal)</b> | <b>35 pts.</b> |
| (2) | <b>Price Proposal</b>                         | <b>25 pts.</b> |
| (3) | <b>Qualifications and Experience</b>          | <b>15 pts.</b> |

**Phase II**

- |     |                      |                |
|-----|----------------------|----------------|
| (4) | <b>Demonstration</b> | <b>25 pts.</b> |
|-----|----------------------|----------------|

The solicitation required that all questions be submitted in writing to the procurement officer by August 3. On August 3, ITMO issued Amendment 1 to the solicitation that published the questions and provided the State's response to those questions. Amendment 1 did not extend the August 3 deadline to submit questions and maintained the original deadline for proposal submission as August 30, 2018. Subsequent to the August 3 deadline for questions and the publishing of Amendment 1 that did not extend the deadline for questions, EA sent an email dated August 23, 2018 to the procurement officer, Sarah Hancock, asking additional questions regarding the solicitation. On August 27, 2018, Ms. Hancock forwarded an email to EA providing substantive responses to the questions submitted on August 23. An internal email from Ms. Hancock indicated that she intended these questions and the responses to be included in Amendment 2. However, the State's responses to the EA questions were not provided to any of the other prospective offerors nor were they published as an amendment to the solicitation.<sup>1</sup> A copy of the email exchanges are attached hereto as **Exhibit A**.

On August 30, 2018, proposals were received. The only two Offerors to submit proposals were EIS and EA. Subsequent to the submission of the proposals, ITMO transmitted the Proposals to an evaluation panel for scoring for Phase I of the evaluation. It appears that the panel was composed of six persons. However, the scoring used to determine the Offeror whose proposal was most advantageous to the State was compiled by using only three of the evaluators' scores. The Written Determination reflects that only one scoring meeting was held on November 6, 2018; however, the records received to date reflect that at least two scoring meeting were held on September 28 and October 4. Also, on October 2, 2018, the records reflect that the procurement officer forwarded a request for clarification of a number items requiring a response within twenty-four hours. It does not appear that EA responded to this request.

It is unclear whether the procurement officer or the evaluation panel scored the Price Proposals. However, the Written Determination reflects that during the scoring process the evaluation panel was provided the pricing information from the Offerors and asked to consider pricing as part of the evaluation criteria.

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<sup>1</sup> There appears to be at least one additional question posed by EA and responded to by ITMO after the deadline concerning whether EA should provide an executed EULA as set forth in Attachment C to the solicitation.

The evaluation panel members were asked to review the proposals with the following criteria in mind to assist in developing negotiation points and to assure the product offered would meet the State's and agency's needs.

**Evaluation Criteria:**

**Phase I:**

1. Proposed Solution (Technical Proposal) - The degree, completeness and suitability of the Contractor's proposed technical solution to meet or exceed the requirements of this RFP. (1-35 points)
2. Price Proposal - The total cost of the proposed solution for the potential three (3) year contract term. (1-25 points)
3. Qualifications and Experience - The Contractor's qualifications and experience must provide evidence of its depth and breadth of experience, and evidence of successful past performance with projects of this similar size and scope. (1-15 points)

See Written Determination for Award, p. 2.

For purposes of calculating the points assigned for the Price Proposal, the State determined the EIS price to be \$6,182,730.00 and the EA price to be \$3,526,370.27. The scoring that was applied for the Price Proposals was incomplete and did not reflect the total cost of ownership as provided in the RFP. The documents obtained from ITMO reflects that the scoring was based on three (3) years rather than the potential five (5) year period. Moreover, when evaluating EIS' Price Proposal and determining the total price for calculating the appropriate points, the State erroneously included the pricing for Optional Features, resulting in an overstated price calculation for EIS that impacted scoring.

After Phase I scoring was completed, both EA and EIS were invited to provide Demonstrations during Phase II of the solicitation process. A scoring meeting for scoring Phase II was held after each Demonstration. Upon information and belief, the evaluators were aware of the pricing provided by EIS and EA during the scoring of the Demonstrations. The partial panel added the scores for the Demonstration to the existing scores, and EA was deemed the highest scoring Offeror with EA awarded 234 points and EIS awarded 223 points. The State began negotiations with EA on November 1, 2018. On November 14, 2018, negotiations with EA were concluded. The Notice of Intent to Award was issued on November 16, 2018, reflecting the proposed award to EA.

EIS contends the proposed award to EA is improper and contrary to the Procurement Code. In this competitive Request for Proposal process, EIS was the close second ranked offeror. Indeed, EIS received a significantly higher score on the Technical Proposal, Qualifications and Experience and Demonstration award criteria. Specifically, EIS outscored EA 181 to 159 on these award criteria. EA was deemed the highest ranked Offeror after it was awarded 25 points for the Price Proposal award criteria and EIS was awarded the 14 points. The advantage provided to EA on the

scoring of the Price Proposal was obtained through erroneous and incomplete calculation of the pricing. It is apparent from the documents provided to date that EA's proposal was wholly non-responsive and, further, that the process for selection of EA as the highest ranked offeror for negotiations was legally and materially flawed. EIS maintains that the scoring for these award criteria were impacted by advantages provided to EA through improper communications that were not communicated to EIS. In addition, the evaluation process was irreparably tainted by the irregularities in the empaneling of the evaluators and their access to the pricing during the evaluation process. Furthermore, based on the records provided to date, EIS maintains that the State's responsibility determination was arbitrary, capricious and clearly erroneous and that EA should have been deemed a non-responsible Offeror.

## ISSUES OF PROTEST

- I. EA was provided a competitive advantage when it was permitted to submit questions after the deadline established by the State and the State responded to those questions without providing those responses to other prospective Offerors or otherwise publishing those responses in an Amendment.**

The enumerated purposes of the enactment of the SC Consolidated Procurement Code includes 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 and to foster effective broad-based competition. S.C. Code Ann. § 11-35-20. The RFP clearly established an August 3 deadline for all questions be submitted in writing to the procurement officer. That deadline was never formally or informally extended. EIS had every right to expect that the pre-proposal process would be conducted in accordance with the requirements of the RFP, the policies established by the State and the Code. The RFP clearly prohibits questions from being submitted beyond the deadline established in the RFP (August 3). The RFP also clearly requires the State to furnish all information that would impact the submission of proposals to all prospective Offerors through the issuance of an Amendment.

### QUESTIONS FROM CONTRACTORS (FEB 2015)

(a) Any prospective Contractor desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions regarding the original solicitation or any amendment must be received by the Procurement Officer no later than five (5) days prior to opening unless an earlier date is stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. [See R. 19-445.2042(B)] Any information given a prospective Contractor concerning a solicitation will be furnished promptly to all other prospective Contractors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective Contractors. See clause entitled "Duty to Inquire." **We will not identify you in our answer to your question.** (b) The State seeks to permit maximum practicable competition. Contractors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition. [See R. 19-445.2140] [02-2A095-2]

The communications set forth in **Exhibit A** reflects that the requirements imposed by the RFP have been violated. First, EA was afforded the opportunity to ask questions beyond the deadline imposed by the State. The fact that this opportunity was not afforded to EIS is prejudicial to EIS. EIS was further prejudiced by the fact that the procurement officer, inexplicably, responded to these questions without providing this information to prospective Offerors through the issuance of an amendment. The email exchange in Exhibit A reflects that the procurement officer recognized the need to publish the responses as an amendment but failed to do so. The State's response to the EA questions included specific substantive responses which was designed to assist EA in how it structured its Technical Proposal. The questions were specifically directed to solicit information on how to respond to the provisions in Section II, III and IV of the RFP. The response clarified some confusing aspects of how Section II related to Sections III and IV and how the State would evaluate the Technical Proposal. This information would have been helpful in how EIS would have determined to structure its proposal. For example, this response would have resolved uncertainty concerning expectations or obligations to provide a specific response to each set of requirements in Section II. The response would have provided some insight from the State as to the flexibility on how to structure the response and would have resulted in EIS submitting a clearer, easier to understand Proposal, which could have yielded additional technical points. Indeed, comments from the evaluators on the EIS scoring sheet indicate that EIS' structure of its Technical Proposal impacted the subjective scoring of the evaluators. It is indisputable that EA's untimely submission of its questions violated the requirements of the RFP. The response provided by the State to EA provided an unfair competitive advantage as EA was privy to information not available to EIS that assisted in the structure of the RFP. EIS would have benefited from the receipt of this information. EA also has a duty to disclose in its proposal any unfair competitive advantage it possessed in this solicitation. EA was well aware that it submitted questions beyond the deadline and that the State's responses were not provided to the other Offerors through the issuance of an amendment. EA's failure to disclose this competitive advantage rendered its proposal non-responsive.

**II. EA's proposal was non-responsive to material, essential and mandatory requirements of the RFP in ways that affected price, quality, quantity and delivery of services; and, as such, EA's proposal should have been rejected.**

EA was non-responsive to the material, essential and mandatory requirements of the RFP as detailed below. These material deviations from the requirements of the RFP clearly affected price, quality and delivery of services at issue and required rejection of the EA proposal. The State's failure to determine the EA proposal as non-responsive was arbitrary, capricious and in violation of the applicable provisions of the Code and regulations.

**A. EA failed to provide a Transition Plan that contained Transition Milestones with commensurate Fee Credits in violation of the RFP.**

Section IV.7 of the RFP required the Offerors to submit the following in its proposal:

**7. Implementation, Transition Plan & Training Plan:**

Describe the logical work plan including Contractor's responsibilities, the SCDE's responsibilities, milestones, and deliverables. Include a **Transition Plan** that identifies (i) the transition activities to be performed by Contractor and the significant components, subcomponents and the conditions precedent associated with each such activity, (ii) all deliverables to be completed by Contractor, (iii) the date(s) by which each such activity or deliverable is to be completed (the "**Transition Milestones**") and commensurate monthly percentage fee credits due the SCDE ("**Fee Credits**") for Contractor missed Transition Milestones, (iv) the contingency or risk mitigation strategies to be employed by Contractor in the event of disruption or delay, (v) the acceptance criteria (and, if appropriate, description of applicable testing) to be applied by Contractor in evaluating Transition Services deliverables, and (vi) transition resources to be provided by Contractor.

RFP, p. 36.

The express intent of the RFP require security to the State to the extent the Offeror could not timely complete deliverables outlined in the Transition Plan. The RFP contains numerous provisions that support SCDE objective that this contract be implemented in a timely fashion. The Fee Credits were designed to impose "liquidated damages" for the contractor's failure to meet the deliverables. Indeed, the Contractor would be required to pay to SCDE the commensurate Fee Credit for any missed Transition Milestone.

**Failure to Meet Transition Milestones.**

If Contractor fails to meet a Transition Milestone, Contractor shall pay SCDE any Fee Credits specified in the Transition Plan for such Transition Milestone.

Neither the Transition Services nor the activities and deliverables associated with individual Transition Milestones will be deemed complete until Acceptance of such activities and deliverables by SCDE, in writing.

In addition to any Fee Credits due SCDE, if Contractor fails to meet the mutually agreed upon adjusted date specified for any Transition Milestone, Contractor shall not be entitled to any further compensation for work associated with such Transition Milestone after such adjusted date.

RFP, p. 65.

The requirements of Section IV.7 regarding the inclusion of Fee Credits were mandatory and non-waivable. EA's failure to include any Fee Credits had a significant and material effect on risk and price, and it limited the State's rights set forth in the RFP in the event of non-performance. By failing to include any Fee Credits in its Transition Plan or anywhere in its Proposal, EA has avoided what would be significant "liquidated damages" that would accompany the Transition Milestones and reduced its risk. EA's Proposal must be rejected as non-responsive.

**B. EA improperly limited its liability with respect identity theft prevention and disclosure and reporting of such disclosures.**

The RFP imposes very specific requirements for data security and the obligations and liability on the contractor for any data security breaches.

**INFORMATION USE AND DISCLOSURE (FEB 2015)**

Except to the extent necessary for performance of the work, citizens should not be required to share information with those engaged by the government in order to access services provided by the government and such information should be used by those engaged by the government only to the extent necessary to perform the work acquired; accordingly, this clause addresses basic requirements for the Contractor's use and disclosure of government information, which expressly includes, but is not limited to, information provided by or obtained from the citizens. Anonymizing information does not resolve the foregoing concern. This clause should be broadly interpreted to effectuate this intent. Every obligation in this clause is material. Absent express reference to this clause, this clause supersedes any other clause to the extent of any inconsistency unless and to the extent the other clause provides greater protection for government information.

(h) *Actions Following Disclosure.* Immediately upon discovery of a compromise or improper use of government information, Contractor shall take such action as may be necessary to preserve forensic evidence and eliminate the cause of the compromise or improper use. As soon as practicable, but no later than twenty-four hours after discovery, Contractor shall notify using governmental unit of the compromise or improper use, including a description of the circumstances of the use or compromise. As soon as practicable after discovery, Contractor shall undertake a thorough forensic investigation of any compromise or improper use and provide the using governmental unit all information necessary to enable the using governmental unit to fully understand the nature and extent of the compromise or improper use. With regard to any compromise or improper use of government information, Contractor shall: (1) provide any notification to third parties legally required to be provided such notice by Contractor, and if not (e.g., if legally required of the using governmental unit), Contractor shall reimburse using governmental unit for the cost of providing such notifications; (2) pay all costs and expenses for at least two years of identity theft monitoring services (including without limitation, credit monitoring) and identity theft restoration services for any such affected individuals receiving notice where such services are appropriate given the circumstances of the incident and the nature of the information compromised; (3) undertake any other measures that are customary and reasonable for an entity to take when experiencing a similar disclosure, (4) pay any related fines or penalties imposed on the using governmental unit, and (5) reimburse the Using Governmental Unit all costs reasonably incurred for communications and public relations services involved in responding to the compromise or improper use. Notwithstanding any other provision, contractor's obligations pursuant to this item (h) are without limitation.

(i) *Survival & Remedy.* All the obligations imposed by this paragraph are material. The obligations of this section shall survive termination or expiration of the contract. Without limiting any rights the using governmental unit may have, and notwithstanding any other term of this contract, Contractor agrees that using governmental unit may have no adequate remedy at law for a breach of Contractor's obligations under this clause and therefore the using governmental unit shall be entitled to pursue equitable remedies in the event of a breach of this clause. [07-7B108-1]

RFP, p. 56-57

The above requirements of the RFP specifically provide that the provisions are material and take precedence and supersede any other provision of the RFP. Violations of material requirements of the RFP would indisputably subject the contractor to termination. Furthermore, the above requirements impose very specific obligations and liabilities on the contractor in the event of a data breach or disclosure. These requirements are not in any way conditioned upon a contractor "knowingly" disclosing or violating these requirements. Given the current climate and potential exposure to data breaches and this State's specific history of being subjected to data breaches, there can be no question that these requirements are critical and material to the Contract.

In its Proposal and presumably in response to a provision contained in Section III, Scope of Work, EA stated as follows:



- b. **For even a single knowing violation of these Identity Theft Prevention and Reporting Requirements, the Contractor agrees that the SCDE may terminate for default the contract(s) and may withhold payment(s) owed to the Contractor in an amount sufficient to pay the cost of notifying customers of unauthorized access or security breaches.**

EA maintains data breach insurance and employs industry standard access control, information security, and data encryption technologies in support of a proactive, safe, and confidential computing environment. We accept the SCDE terms related to termination provided EA or its subcontractors has "knowingly" disclosed or violated requirements.

EA's Proposal limiting its liability to "knowing" disclosures or violations of RFP requirements imposes conditions upon the State in violation of the Code and S.C. Reg 19-445.2070(D). Such a condition has an indisputable impact on price as assuming a greater data breach risks requires a higher cost. EA's Proposal must be rejected as non-responsive.

**C. EA failed to meet the RFP requirements for training users.**

The RFP contains several provisions that specifies the training requirements. In connection with the implementation of the Contract the RFP states:

*Training:* The Contractor shall provide training and other help documentation and support, including the following:

- a. Context-sensitive online documentation with customized assistance for OIPE specific screens, forms, and policies designed with input from OIPE.
- b. Availability of a help desk to request technical assistance and submit support tickets.
- c. Compilation of manuals and other end-user support documentation tailored to OIPE's specific configuration of the Contractor's solution.
- d. Provide three (3) regional one-day, on-site trainings for the end users identified by OIPE. Each of the three (3) regional trainings will be located in sites to be determined. A train-the-trainer option is also preferred.
- e. Provide availability of a webinar to conduct additional training.

RFP, p. 28. On page 30 of the RFP, with regards to Contractor support, the RFP requires:

- b. This System must include effective documentation, online help, and other user-directed support and training mechanisms. Training shall include:
  - 1. Must supply 6 full or 12 half day trainings in geographically diverse locations including transportation costs. (SCDE will secure free venues)
  - 2. The Contractor shall include effective documentation, online help, and other user-directed support and training mechanisms.
  - 3. The Contractor will supply a training point of contact
  - 4. The project and succeeding system must provide effective and adequate training to stakeholders.
  - 5. A training point of contact shall be provided by the Contractor for OIPE questions and support.

In addition, the RFP also requires the Training Plan to include the following:

- d. Provide a detailed **Training Plan** which includes appropriate training for various user levels (e.g. management, etc.) including:
  1. Number of hours at no cost;
  2. Duration of training;
  3. Training materials (e.g. manuals, multi-media; video tapes, etc.);
  4. Specific types of training;
  5. Documentation of training progress and scheduling; ("Train-the-trainer," online components)
  6. Plan for on-going training after installation (16 half day sessions annually min).

RFP, p. 37.

On pages 61-62 of its Technical Proposal, EA addresses training. It states that it will provide 120 hours of in person and virtual trainings and breaks down the hours into three groups:

- 3 full day trainings regional trainings in South Carolina (24 hours)
- 16 half day trainings half day trainings that will be provided throughout the year as webinar-style presentations (64 hours)
- Virtual training bank (32 hours)

EA's proposal is limited to 3 full day regional trainings during implementation. The ongoing training only commits to 16 half day trainings via webinar. The Proposal fails to comply with the requirements set forth above regarding Contractor Support requiring 6 full day or 12 half day trainings in geographically diverse areas of the State. EA's modification to the training requirements affects price and delivery of the services and reflects a violation of a material term of the RFP. As such, EA's Proposal must be rejected.

**D. EA's Proposal was non-responsive in that, upon information and belief, it does not currently possess the reporting requirements to comply with the RFP and did not include sufficient costs in its Price Proposal for the web development necessary to comply with the reporting requirements.**

The RFP provides a detailed list of reporting requirements necessary to perform the services required in the Scope of Work. EA's proposal provides extensive narrative concerning its reporting and build phase as well as change management. Upon information and belief, the



required reports do not currently exist and EA will need to develop the required reports, which will necessitate extensive web development hours and time-consuming involvement from SCDE. EA's pricing does not include costs for software development and reporting development. As a result, SCDE will be responsible for the costs associated with the required time that exceeds the 20 hours of software development included in the RFP. EA's failure to propose to provide existing reporting capabilities is a material noncompliance with the RFP that impacts price and services delivered.

**E. EA failed to meet the RFP requirement to provide unlimited phone support.**

As part of the Annual Maintenance and Support requirements of the RFP, the contractor is required to provide unlimited phone support. See Sec. 11.a, RFP, p. 29. In its Proposal, EA limits its phone support to business hours.

**Case Logging and Response times:**

Helpdesk offers coverage from 8:00 am through 6:00 pm Monday through Friday Central Time excluding the standard U.S. holidays

Cases can be logged using:

1. Telephone Case Logging: A central contact point offers you telephone access to report issues during standard business-day hours (or)
2. Online Case Logging: Access when you need it. There is a 24/7 online application to log new cases and, as available, track and update case information.

EA Proposal, p. 64.

As such, EA's Proposal takes exception to the RFP requirement that it be required to provide unlimited phone support. This is a material non-compliance with the RFP that effects price and the delivery of services contemplated under the RFP.

**F. EA's Proposal fails to provide the required Qualifications information for its subcontractor.**

The Qualifications section of the RFP requires offerors to provide all of the information required in the section for subcontractors who will be performing more than 10% of the cost of the work. EA identifies Student1 as a subcontractor who will be providing significant and critical components of the work, including enterprise solution architecture, data integration, data security and privacy and identity management. EA identifies Student1 as a subcontractor in the Qualifications section of its Proposal but fails to provide all of the required information set forth in the RFP. EA's failure to comply with the RFP requirements regarding subcontractors is a material non-compliance with the RFP.

**G. EA failed to meet the RFP requirement regarding Support Response Performance Levels.**

The RFP requires that there is a one (1) hour maximum response time for all critical issues and twenty-four (24) hour maximum response time on non-critical issues. RFP, Sec. 7.c, p. 37. In its proposal, EA indicates that it will support a one (1) hour maximum response time for all critical issues and twenty-four (24) hour maximum response time on non-critical issues and refers the State to Section 3.4.5, Service Level Agreements, for more details. EA Proposal, p. 99. EA's Section 3.4.5 provides as follows:

Table 6. Severity Levels and Response Times

| Rating                  | Initial Response Goal | Update Frequency Goal | Case Classification                                                                                                            |
|-------------------------|-----------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Critical/<br>Priority 1 | 1 Hour                | 2 Hours               | The system is 80-100% unavailable from either a technical or business perspective.                                             |
| Priority 2              | 4 Hours               | 1 Day                 | The system is 20-80% unavailable from either a technical or business perspective.                                              |
| Priority 3              | 8 Hours               | 3 Days                | The system has failed to perform a non-mission-critical task and is 1-20% unavailable.                                         |
| Priority 4              | 8 Hours               | 5 Days                | A minor problem, which does not make the production or development environment unworkable, is not related to a system failure. |
| Priority 5              | 1 Day                 | None                  | Content Development Support or "How-To" Inquiries                                                                              |

\* Response goals are in business hours & days – if a Priority 1 issue was reported in the evening we would strive to respond within the first business hour of the next business day.

EA Proposal, p. 65. EA conditions its agreement to comply with the required Support Response Service Levels upon those responses occurring during business hours and days. EA has imposed conditions that materially deviate from the requirements of the RFP regarding Support Response Service Levels. These conditions have a material effect on price and delivery of services contemplated under the RFP. EA's Proposal should be deemed non-responsive.

**H. EA failed to respond to the procurement officer's request for substantive clarification of several major aspects of its Technical Proposal rendering the Proposal non-responsive.**

On October 2, 2018, the procurement officer forwarded a request for clarification of a number items requiring a response within twenty-four hours. These requests, which probably reflected improper communications with the Offeror, involved several significant aspects of the RFP requirements. It reflects concern by the State as to the responsiveness of the EA Proposal. It does not appear that EA responded to this request. As such, EA's Proposal was non-responsive.

**III. The means and methods in which the evaluation process was conducted and award determination made was arbitrary and capricious and in violation of the Procurement Code.**

**A. Upon information and belief, the scoring of the Evaluation Panel was flawed in that the scoring inexplicably omitted at least one of the evaluators from the scoring.**

EIS has submitted two comprehensive FOIA requests to ITMO regarding any and all documents relating to the evaluation of the Proposals. The evaluator score sheets reflect that the evaluators were assigned a corresponding number. The score sheets further reflect that the scores of Evaluator 2 were not incorporated into the scoring. EIS has been provided no documentation that would explain why the evaluation was conducted using only a partial panel. The Total Score in this procurement was very close. The omission of an evaluator's scores without explanation is arbitrary, capricious and undoubtedly impacted the determination of which proposal was most advantageous to the State. Furthermore, the use of only three evaluators has been rarely if ever performed in State procurement. EIS contends that the decision to proceed for whatever reason with only three evaluators had a prejudicial effect on EIS as its Technical Proposal, based on the scoring, was clearly superior to that of EA. EIS contends that the use of three evaluators did not result in a reasonable and rational determination as to the highest ranked offeror and, thus, was contrary to law and the purposes of the Procurement Code. Given that there is no documentary support for this scoring anomaly, this issue alone supports a CPO decision to conduct a hearing to develop further evidence regarding the propriety of the scoring of the proposals.

**B. Upon information and belief, the Evaluation Panel was provided the Offeror's pricing information or pricing scores prior to completion of the subjective scoring of the other evaluation criteria.**

The Written Determination reflects that during the scoring process the evaluation panel was provided the pricing information from the Offerors and asked to consider pricing as part of the evaluation criteria. The records reflect that pricing information and/or the pricing scores may have been disclosed during the Phase I evaluation as the Written Determination lists the Price evaluation criteria as one the panel was asked to consider. If the evaluation panel was provided pricing prior to or contemporaneous with the evaluation panel's scoring of the "Propose Solution (Technical Proposal)", "Qualifications and Experience" and/or the "Demonstration" award criteria, it would create a condition where the evaluation panel's review of the offerors' proposals would be biased.

It has long been the practice of the State, as acknowledged by the SC Procurement Review Panel, that pricing information and scores are not provided to the evaluation panel but are kept separately calculated and added to the evaluators' scores only after all of the subjective scoring of the other review criteria are completed. The obvious reason, which could have occurred in this case, is that knowledge of any pricing or price score differential could lead to bias in the evaluation of the other criteria. In this case, if the prices and price scores were not kept confidential until

after the evaluation panel had scored all of the other review criteria, the panel's scores are tainted and otherwise arbitrary and capricious.

**C. The scoring of the Price Proposals erroneously or arbitrarily was based on only three (3) years of the potential five (5) year contract.**

EIS maintains the scoring that was applied for the Price Proposals was incomplete and did not reflect the total cost of ownership as provided in the RFP. The documents obtained from ITMO reflects that the scoring was based on three (3) years rather than the potential five (5) year period. This is additional evidence of the arbitrary and capricious nature of the scoring in violation of the Code.

**D. The total price used to calculate the EIS' score for the Price Proposal evaluation criteria included Optional Features that the RFP expressed would not be considered for evaluation purposes.**

The RFP invited Offerors to provide Optional Features in the Price Proposals but indicated that the pricing for the Optional Features would not be considered in the evaluation of the Price Proposals. EIS chose to provide an optional feature for Roster Verification in its Price Proposal at an annual cost of \$243,500. This was clearly delineated as an Optional Offering in its Price Proposal. Admittedly, EIS erroneously included the optional price for Roster Verification in its annual cost. However, the error was clear from the face of its Proposal. There is no question that this was intended as an Optional Feature and should not have been included in the calculation of EIS' pricing used to score the Price Proposal.

**E. The procurement officer engaged in improper communications with EA when forwarding a request for clarification that reflected concern about the responsiveness of the EA proposal and the response necessarily required revisions or additions to the Proposal.**

On October 2, 2018, the procurement officer forwarded a request for clarification of a number items requiring a response within twenty-four hours. It is unclear whether the request was an effort to engage in clarification under SC Reg. 19-445.2080 or to engage in discussions under SC Reg. 19-445-2095(I). Either way, the communications were not conducted in accordance with the Code and the applicable regulations. These requests involved several significant aspects of the RFP requirements. It reflects concern by the State as to the responsiveness of the EA Proposal and required substantive responses far beyond those contemplated by 19-445.2080. There is no evidence in the records received that the procurement officer made any effort to classify the Proposal for responsiveness and otherwise failed to comply with the requirements of 19-445.2090(I). The records received to date do not reflect that EA responded to the request for information. To the extent there was a response and further exchange between EA and the State that has not been provided in response to the FOI requests, EIS would contend that those further exchanges were conducted in violation of the Code and applicable regulations.

**IV. The procurement officer responsibility determination, to the extent one was made, was not conducted in accordance with the Code and was otherwise arbitrary, capricious and clearly erroneous.**

There is no evidence in the records provided to date that the procurement officer conducted a responsibility determination. Indeed, the Written Determination does not reference that any responsibility determination was made. EIS contends that the financial records alone provided by EA reflect that EA does not have sufficient financial capabilities to perform a contract of this size for the State of South Carolina. Furthermore, EA failed to provide any financial information for its subcontractor, Student1. The only evidence in the record concerning any type of responsibility review was a request for three references on November 15, 2018, the day before the Notice of Intent was issued. Upon information and belief, there was only one reference that was possibly checked and it is unclear whether that occurred prior to the issuance of the Notice of Intent. As such, the procurement officer failure to comply with the Code concerning a responsibility determination reflects that the award was made in violation of the Code. The procurement officer should have determined EA to be a non-responsible Offeror.

For the foregoing reasons, the notice of award to EA should be cancelled. The improper communications between the procurement officer and EA prejudiced EIS and provided EA with a competitive advantage. EIS contends that EA's Proposal should have been rejected as non-responsive. With the rejection of EA, EIS, therefore, would be the highest ranked Offeror. EIS also contends that the evaluation process was flawed and resulted in an award that was made in violation of the Code. As such, EIS is requesting the Chief Procurement Officer issue a decision to award the Contract to EIS or, in the alternative mandate re-solicitation under the governing authority set forth in the Code and the regulations.

EIS will rely on these arguments and such additional information as may become available through the course of our Freedom of Information Act request and further investigation. We are requesting an administrative review and believe that, under these circumstances, a hearing of this protest is in the best interests of the State.

To the extent that the CPO determines he will not hold a hearing, we are requesting copies of all materials provided to you and an opportunity to review and provide comment on such submissions. Furthermore, to ensure due process, we would request that the CPO provide all interested parties a deadline by which to produce evidence for the CPO to consider in reaching a decision, and the date on which the CPO's review will be completed.

Michael B. Spicer, Chief Procurement Officer  
December 3, 2018  
Page 16 of 16

EIS appreciates your consideration of this Protest. If there are any questions relating to any matter, please let us know and we will promptly respond.

Sincerely,



E. Wade Mullins, III

EWM/les

cc: Butch Bowers, Esq.  
Matthew Montaigne, Esq.  
Pat Krause

**From:** [Hancock, Sarah](#)  
**To:** [Montgomery, Elsie S](#)  
**Subject:** FW: SCDE Education Value-Added Solicitation #5400015940 Requirements  
**Date:** Monday, August 27, 2018 9:03:00 AM

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Hi Elsie:

Can you provide answers to the below questions please? These will be addressed in Amendment 2.

Thank you,  
Sarah

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**From:** Joshua Marland [mailto:[jmarland@edanalytics.org](mailto:jmarland@edanalytics.org)]  
**Sent:** Thursday, August 23, 2018 6:44 PM  
**To:** Hancock, Sarah  
**Cc:** Lalanthika Vasudevan; Andrew Rice; Sean McLaughlin; Ernest A. Morgan  
**Subject:** SCDE Education Value-Added Solicitation #5400015940 Requirements

Dear Ms. Hancock,

We are preparing our bid for the Education Value-Added Solicitation, and are hoping you can answer two questions for us since we are still more than five days out from the final date for submission.

The first is about the sets of requirements to which we should be writing. It appears that there are three different sets of requirements, some of which overlap:

Page 18 – Detailed explanation of proposed solution  
Page 23 – System Requirements  
Page 33 – System Information

On page 33, bidders are directed to respond to all requirements from page 18 and any other requirements. Does that mean we should prepare a written response for the requirements that begin on pages 23 and 33 as part of our technical proposal as well? We see in the 2014 RFP that there was only one set of requirements, similar to those listed on page 18.

The other question is whether you are able to provide any information on the volume of help desk requests during the year.

Any information you can provide would be greatly appreciated.

Thank you!  
Joshua

**Joshua J. Marland**  
Director of Data Strategy  
Education Analytics  
131 W. Wilson Street, Suite 200

Madison, WI 53703  
(608) 467-4136  
<http://www.edanalytics.org>



**Wade Mullins**

---

**From:** Hancock, Sarah  
**Sent:** Monday, August 27, 2018 4:56 PM  
**To:** Joshua Marland  
**Cc:** Lalanthika Vasudevan; Andrew Rice; Sean McLaughlin; Ernest A. Morgan  
**Subject:** RE: SCDE Education Value-Added Solicitation #5400015940 Requirements

Joshua:

Please see answers below:

First question:

Page 18 represents the state suggested outline for preparing the response required

**CONTENTS OF OFFER (RFP) -- SOLUTIONS BASED (JAN 2006)**

The following outline may be helpful in preparing your proposal. Your offer should address each of the areas outlined below (as applicable) and provide the information requested. As your offer will be evaluated based on the information you provide, failure to provide a complete and comprehensive presentation of your solution could negatively affect our evaluation of your offer.

Page 23 represents the scope of work as described by the state This is the actual description of the work to be completed.

Page 33 Represents a generalized description of state concerns to be addressed in the contractor's response to the scope of work.

Second question:

The state has no information on the volume of calls received by the current solution vendor.

Thank you,  
Sarah

---

**From:** Joshua Marland [mailto:jmarland@edanalytics.org]  
**Sent:** Thursday, August 23, 2018 6:44 PM  
**To:** Hancock, Sarah  
**Cc:** Lalanthika Vasudevan; Andrew Rice; Sean McLaughlin; Ernest A. Morgan  
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Joshua

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<http://www.edanalytics.org>

## 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.

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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.**