

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In Re: Protest of First Agency, Inc.

CASE NO. 2015-102

Protest of Intent to Award to Dissinger
Reed, LLC for Student Athletic
Accident Insurance for the College of
Charleston, Solicitation No. #
14.63.LS.BVB.T5

POSTING DATE: September 11, 2014

MAILING DATE: September 11, 2014

The South Carolina Consolidated Procurement Code (the Code) grants any actual bidder the right to protest the award or intended award of a contract, except that a matter that could have been raised as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation was issued by the College of Charleston (COC) for Student Athletic Accident Insurance. First Agency, Inc. protests the intended award of a contract to Dissinger-Reed, LLC [Attachment 1]. The Chief Procurement Officer¹ held a hearing to address this matter on September 10, 2014. Present at the hearing were representatives from First Agency, Inc. and the College of Charleston. The Chief Procurement Officer was represented by William Dixon Robertson III.

Findings of Fact

Invitation For Bids Published:	06/23/2014
Proposals Opened	07/07/2014
Intent to Award Posted:	07/10/2014
First Agency Inquiry	07/10/2014
Shealy Responds to First Agency	07/22/2014
Protest Letter Dated	07/28/2014
Intent to Award Suspended	07/21/2014

Discussion

This protest arises from a Best Value Bid for athletic insurance services. First Agency's first and second issues of protest are directed at the solicitation. In paragraph E under Minimum

¹ The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

Specifications on page 18 of the solicitation, COC asks for a “Primary Insurance Verification Coverage Backer Program.” First Agency alleges that

The solicitation specifically asked for a product/service by name (Primary Insurance Verification Coverage Backer Program) that is unique to the incumbent broker, which reduces competitive bidding.

This issue could have been raised as a protest of the solicitation. Section 11-35-4210(1)(b) states that a matter that could have been raised as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract. Since the protest was filed more than fifteen days after COC published the solicitation, it is untimely. *Appeal by National Cosmetology Association*, Panel Case No. 1996-17.

Even if this issue had been raised as a timely protest of the solicitation it would fail because the solicitation went on to describe the salient features of an acceptable “Primary Insurance Verification Coverage Backer Program” as follows:

The awarded Carrier/Agent shall provide a reasonably priced program to verify “real-time” status and coverage details of individual primary insurance plans carried by student athletes. The program shall be capable of proactively identifying coverage lapses, uninsured/underinsured status, and assist in providing primary insurance coverage for student athlete as needed.

See Appeal by Davis and Geck, Inc., Panel Case No. 1986-9 (“A ‘Brand Name or Equal’ specification is intended to be descriptive, not restrictive, and is to indicate the quality and characteristics of the products that will be satisfactory and acceptable.”); *Appeal by General Sales Company*, Panel Case No. 1983-5 (“Products offered as equal must, of course, meet fully the salient characteristics and product requirements listed in the Invitation for Bids.”).

First Agency’s second issue of protest is, again, an issue that could also have been timely raised as a protest of the solicitation and cannot be raised as a protest of the award:

The cost to provide the Verification Coverage Backer service is less than \$400 to the College, based on information from the Dissinger-Reed website. If this service were contracted separately, the savings to the College would be \$100,000 (or more) over the 5-year contract period. This hardly seems like the “Best Value” for the institution.

These issues of protest are denied.

The third and fourth issues of protest address evaluation criterion two and three respectively:

3. Mr. Sanfelice's response indicated that our proposal lacked "quality and depth"; however, he provided no concrete examples of how that assessment was made. This appears to be overly subjective and again would favor the incumbent broker.

4. Mr. Sanfelice's response also referred to "professional qualifications" with no explanation as to why we were scored lower in those areas. Our agency has been providing student and athletic accident plans since 1959—55 years and counting. The College of Charleston was a client of our agency prior to the current contract term and we believe that we served them "professionally" and with "quality." Our references, if verified, would support that assessment.

This was a Best Value Bid issued under Section 11-35-1528 of the South Carolina Consolidated Procurement Code. The solicitation included three evaluation criteria: Cost, weighted at 60% as required by law; Quality and Depth of Technical Proposal weighted at 30%; and Professional Qualifications at 10%. In *Appeal By Coastal Rapid Transit Authority*, Panel Case No. 1992-16, the Procurement Review Panel set the standard for review of award determinations:

The determination by the State who is the most advantageous offeror is final and conclusive unless clearly erroneous, arbitrary, capricious or contrary to law. §11-35-2410. ... The Panel will not substitute its judgment for the judgment of the evaluators who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals and are not actually biased.

First Agency provided no evidence that the evaluators acted in an arbitrary or capricious manner or failed to follow the Code. Testimony by the only evaluator present at the hearing, Ms. Amanda Taylor, indicated a logical, well considered evaluation. These issues of protest are denied.

The final issue of protest is that Dissinger-Reed, the apparent successful bidder, failed to meet a material requirement of the solicitation. The solicitation required that: "The awarded Carrier/Agent must provide **full-service claims processing** for all claims received" (emphasis in original). First Agency takes the position that the awarded Carrier/Agent must directly perform the claims processing and since Dissinger-Reed proposed AG Administrators, Inc. to handle claims processing, it should have been disqualified. Merriam-Webster's Online Dictionary

defines “provide”² as: to make (something) available: to supply (something that is wanted or needed). Dissinger-Reed made claims processing available. There was no requirement that the service be performed directly by the bidder and no prohibition against using another company to provide the service. This issue of protest is denied.

Determination

For the reasons stated above, the protest of First Agency, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

²Merriam-Webster’s Online Dictionary: <http://www.merriam-webster.com/dictionary/provide> (last viewed September 11, 2014).

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2014 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
1105 Pendleton Street, Suite 202, 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.



FIRST AGENCY, INC.

5071 West H Avenue • Kalamazoo, MI 49009-8501 • Phone: (269) 381-6630 • Fax (269) 381-3055

July 28, 2014

Mr. Voight Shealy
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Solicitation #14.63.LS.BVB.T.5

Dear Mr. Shealy,

Thank you for your detailed response to my earlier emails. It is our intent to continue with a protest of the award for the above-captioned solicitation that was initiated in my emails of both July 10, 2014 and July 20, 2014.

The main points of consideration to support our position are as follows:

1. The solicitation specifically asked for a product/service by name (Primary Insurance Verification Coverage Backer Program) that is unique to the incumbent broker, which reduces competitive bidding. It's no surprise there were only two submissions.
2. The cost to provide the Verification Coverage Backer service is less than \$400 to the College, based on information from the Dissinger-Reed website. If this service were contracted separately, the savings to the College would be \$100,000 (or more) over the 5-year contract period. This hardly seems like the "Best Value" for the institution.
3. Mr. Sanfelice's response indicated that our proposal lacked "quality and depth"; however, he provided no concrete examples of how that assessment was made. This appears to be overly subjective and again would favor the incumbent broker.
4. Mr. Sanfelice's response also referred to "professional qualifications" with no explanation as to why we were scored lower in those areas. Our agency has been providing student and athletic accident plans since 1959—55 years and counting. The College of Charleston was a client of our agency prior to the current contract term and we believe that we served them "professionally" and with "quality." Our references, if verified, would support that assessment.
5. Page 19 of the solicitation refers to Customer Service (item G)—"The awarded Carrier/Agent must provide *full-service claims processing* for all claims received." It's our understanding that Dissinger-Reed is a broker and does not provide claim service at all. Our office is an MGA for

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multiple carriers and does provide *full-service claims processing* with our own in-house staff that is fully compliant. This alone should have provided an edge over the Dissinger-Reed submission.

Mr. Shealy, in closing I want to let you know that we certainly do respect the bid process. We feel in this case that the award was made unfairly without taking all items above into consideration. We feel that the award was not an overall "Best Value" for the College of Charleston and request relief in reversing the award.

We look forward to your response and advisement of the next steps. If you should have any questions, please contact me directly.

Kind regards,



David L. Turley