

STATE OF SOUTH CAROLINA	)	BEFORE THE SOUTH CAROLINA
	)	PROCUREMENT REVIEW PANEL
COUNTY OF RICHLAND	)	
	)	
	)	ORDER
IN RE: Appeal by Any Transactions, Inc.	)	
	)	Case No. 2012-6
IFB No. 5400004212	)	
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This matter came before the South Carolina Procurement Review Panel (the Panel) pursuant to a request by Any Transactions, Inc. (AnyTrax) for further administrative review under sections 11-35-4210(6) and 11-35-4410 of the Consolidated Procurement Code (the Procurement Code). AnyTrax appealed the August 7, 2012, decision of the Chief Procurement Officer (the CPO) for the Information Technology Management Office (ITMO) denying its protest of an intended award to Fieldware, LLC (Fieldware). In the Panel’s hearing on October 31, 2012, AnyTrax was represented by Melissa J. Copeland, Esquire. M. Elizabeth Crum, Esquire, represented Fieldware; and William Dixon Robertson, III, Esquire, represented the CPO.

**Findings of Fact**

The Information Technology Management Office (ITMO) conducted this statewide, multi-agency solicitation on behalf of the South Carolina Department of Juvenile Justice (SCDJJ) and the South Carolina Department of Probation, Parole, and Pardon Services (SCDPPPS). With this Invitation for Bids (IFB), ITMO sought a vendor to provide monitoring and reporting services for both high and low risk offenders who have been placed on community supervision by a court or a parole board. The IFB described the desired technologies as follows:

The technologies will be used as a supervision tool for sanctions and alternative reporting methods. These technologies are intended to increase agent efficiency to devote more time to high risk populations while holding offenders accountable. These technologies may also be used as a graduated method to address violations.

Technologies that may be used are Voice Verification/Telephone Reporting includes land, digital, satellite, cellular; RF monitoring; active, passive, and hybrid global positioning (GPS) monitoring.

Record at PRP59. The IFB asked vendors to submit bids by two lots: Lot 1 for Voice Verification/Telephone Reporting and Lot 2 for GPS Monitoring and Radio-Frequency (RF).

Record at PRP60. The protest before the CPO, and now the appeal before the Panel, only concerns the intended award of Lot 1.

SCDJJ and SCDPPPS each outlined functionality specifications for Lot 1 in the IFB.

Record at PRP60 – PRP65. Of particular relevance to the dispute before the Panel is the SCDPPPS specification which requests:

1. A biometric voiceprint template established for voice verification by the offender for purposes of curfew/schedule monitoring as a special condition or graduated sanction with an estimated impact up to 300 offenders at one time; telephone reporting for the management of low risk offenders. However, the State recognizes that a telephone reporting system can also be used to enhance the management of high-risk offenders and be used for the Administrative Monitoring population. The estimated impact is up to 10,000 offenders.

Record at PRP60. In addition to responding to the items of functionality described by each agency in the IFB, vendors were asked to submit a bidding schedule wherein they divided their bids for Lot 1 into two Items. Record at PRP88. Item 1 was entitled “Random/Scheduled Voice Verification with up to five (5) verifications per day,” and Item 2 was entitled “Automated Offender Reporting with Voice Verification includes recording participant responses for up to ten (10) inquiries per call.” *Id.* The bidding schedule also advised bidders that “Award will be mad by Lots, for complete lots. Bidders must respond to all items within each lot.” *Id.*

Mr. Eric Tumperi, CEO and President of AnyTrax, testified before the Panel that he understood Item 1 of Lot 1 on the bidding schedule to refer to a curfew monitoring system for high risk offenders which would be able to verify an offender's whereabouts through voice verification. Mr. Tumperi explained that the curfew monitoring system needed to be configurable and able to place up to five random or scheduled telephone calls per day to the monitored individual. Mr. Tumperi testified that Item 1 of Lot 1 represented a more difficult task and was therefore more expensive. On the other hand, Mr. Tumperi described Item 2 of Lot 1, which referred to an automated telephone reporting system for low risk offenders, as "much easier." Mr. Tumperi explained that a telephone reporting system receives calls from monitored offenders, who must then answer a series of recorded questions. While Mr. Tumperi admitted that AnyTrax competes with Fieldware in the telephone reporting market, he asserted that Fieldware had never bid on or performed a voice curfew system any where in the country.

The IFB also contains a Qualifications section, which provides in pertinent part:

**QUALIFICATIONS – REQUIRED INFORMATION (JAN 2006)**

In order to evaluate your responsibility, offeror shall submit the following information or documentation for the offeror . . . :

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(c) A detailed, narrative statement listing the three most recent, comparable contracts (including contact information) you have performed and the general history and experience of your organization.

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Record at PRP75. AnyTrax sought clarification of paragraph (c) above by submitting the following question to the State:

**Question 37:** V. Qualifications (c): Please clarify that for a bidder to meet the State Standards of Responsibility as applicable to this RFP [sic], "comparable contracts" are defined as those for which the bidder provided all items described

in the Lot(s) on which they are bidding, including the definition of those as described on page 17 under Lot #1, requirement 1.

**State Response: Yes, they must be similar.**

Record at PRP107 (Amendment 2). Another question in Amendment 2<sup>1</sup> also sought clarification of “comparable contracts”:

**Question 51: RE: Qualifications – Required Information**, on page 32, sections (c) and (d): please clarify how the agency defines “comparable contracts” and “services substantially similar.” Realizing vendors are asked to include contracts with voice verification, GPS, and RF usage and to err on the side of inclusion, should these contracts be defined, for example, as those with comparable unit counts for both agencies (PPP and DJJ) combined or just similar State contracts using these services? We want to be thorough and inclusive, but also not provide the agency with a voluminous response of contracts that use only a few RF or GPS units.

**State Response: Please provide any relative experience that is similar and complies with the requirements as stated in section V. Qualifications – REQUIRED INFORMATION**, on page 32[.]

Record at PRP110.

The IFB was amended two other times, but those amendments are not relevant the issues on appeal. The bids were received and opened on May 24, 2012, and the Intent to Award Lot 1 to Fieldware was posted on June 11, 2012. Record at PRP160 – PRP161. AnyTrax filed its protest of the intended award on June 20, 2012, and the award was suspended on June 21, 2012.

Record at PRP34 – PRP39; PRP162.

Fieldware’s bid for Lot 1 of the IFB offered two modules of its OffenderLink™ program: Automated Telephone Reporting<sup>2</sup> and Biometric Voice Curfew.<sup>3</sup> Record at PRP185.

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<sup>1</sup> The State answered a total of 130 vendor questions in Amendment 2.

<sup>2</sup> Fieldware’s bid describes the Automated Telephone Reporting module as one that will “receive[ ] toll-free calls from offenders either in lieu of or as a supplement to traditional face-to-face reporting.” Record at PRP185. Fieldware represents that this module is configurable and could include biometric voice verifications. *Id.*

<sup>3</sup> Fieldware describes the Biometric Voice Curfew module as one that will “compare[ ] an offender’s voiceprint to a provided voice sample in order to verify an offender’s presence at a known location.” Record at PRP185. Fieldware represents that this module is also configurable and would “allow[ ] an agent to manage the curfew periods, known phone locations, and minimum/maximum calls per curfew period.” *Id.*

Mr. John Lynch, one of Fieldware's managing partners, testified before the Panel that the Biometric Voice Curfew module offered to the State represented a combination of technologies that Fieldware already has in place and that no additional software development would be necessary for the voice verification component of the solution offered to the State. However, he admitted that Fieldware is not currently providing biometric voice identification in conjunction with curfew monitoring in any state contract.

In responding to paragraph (c) of the Qualifications portion of the IFB, Fieldware provided service summaries and contact information for its three most recent state contracts: Oklahoma, Kansas, and Colorado. Record at PRP301 – PRP303. Fieldware's bid noted that these references "are currently using OffenderLink™ for services that are substantially similar to the State's requirements as described in the Solicitation." Record at PRP301. In addition, Fieldware provided information regarding contracts with the states of Missouri and Michigan. Record at PRP303 – PRP304. Mr. Lynch testified that Fieldware chose these states as references because those contracts were similar in size and scope to the South Carolina solicitation. Fieldware described the services provided to each of the references, all of which included Automated Telephone Reporting. Record at PRP301 – PRP305. Mr. Lynch admitted before the Panel that none of the references provided were receiving biometric voice verification services at the time Fieldware submitted its bid for the South Carolina solicitation. However, Mr. Lynch also testified that Fieldware now provides biometric voice verification for Colorado. Furthermore, Mr. Lynch asserted that he did not doubt that Fieldware could provide all of the functionality sought by SCDJJ and SCDPPPS.

## Conclusions of Law

AnyTrax's appeal letter to the Panel raises three issues: one of responsiveness, one of responsibility, and one of material misrepresentation. All three issues turn on the meaning of the phrase "comparable contracts" as it is used in paragraph (c) of the Qualifications section of the IFB. As noted above, paragraph (c) asks a bidder to list, in narrative form, "the three most recent, comparable contracts . . . which you have performed." Record at PRP75. The bid documents do not further define "comparable contracts." However, AnyTrax asserts that the State's answer to Question 37 in Amendment 2 clarified the definition of "comparable contracts" to mean those contracts where a bidder is performing all of the items listed in the Lot on which it is bidding. In other words, with regard to Lot 1, AnyTrax contends that a bidder must list references for which it is performing both curfew monitoring with voice verification (i.e., Item 1) and automated telephone reporting with voice verification (i.e., Item 2). Therefore, because Fieldware failed to list contract references in which it was performing both Items 1 and 2 of Lot 1, AnyTrax contends (1) that Fieldware was not responsive to a mandatory, material requirement of the IFB; or (2) that Fieldware was non-responsible for failing to satisfy a special standard of responsibility; or (3) that Fieldware materially misrepresented its qualifications.

The Panel disagrees that the State's answer to Question 37 defined "comparable contracts" in such a narrow manner. Indeed, the Panel finds that the State's answer, "Yes, they must be similar," is ambiguous and could be interpreted in multiple ways, depending on whether the reader focuses on "yes" or "they must be similar." Because of this ambiguity, the Panel concludes that the State's answer to Question 37 did not change or further define the requirement contained in paragraph (c) of the Qualifications section, which requested "[a] detailed, narrative statement listing the three most recent, comparable contracts (including contact information) you

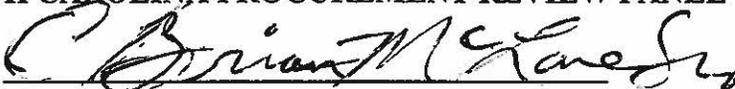
have performed and the general history and experience of your organization.” This finding is also supported by the State’s answer to Question 51 in Amendment 2, which clearly refers vendors back to the Qualifications section of the IFB.

Having rejected AnyTrax’s definition of “comparable contracts,” the Panel finds that each of AnyTrax’s appeal issues must be denied. First, the Panel finds that Fieldware’s submission of five references with narrative descriptions of the services being performed for each customer is fully responsive to the State’s request for “comparable contracts” for the purpose of determining responsibility. *See In re: Protest of NBS Imaging Systems, Inc.*, Panel Case No. 1993-16 (September 1, 1993) (wherein the Panel found that a bidder’s provision of a reference using a similar, but not identical, system to the one being procured for the State was sufficient to aid the State in determining responsibility). Second, the Panel finds that neither paragraph (c) of the Qualifications section nor the State’s answer to Question 37 constituted a special standard of responsibility. *See In re: Protest of CollegeSource, Inc.*, Panel Case No. 2008-4 (January 8, 2009) (wherein the Panel found that the State’s request for three references “who have used your services for a similar solicitation” for “projects of similar size and scope” neither clearly identified the requirement as a special standard, nor established an objective standard as required by the regulation governing special standards of responsibility). Finally, the Panel finds that AnyTrax failed to produce any evidence that Fieldware materially misrepresented the information contained in its response to paragraph (c) of the Qualifications section.

Therefore, for the reasons stated above, the Panel denies AnyTrax's appeal and affirms the decision of the CPO.

**IT IS SO ORDERED.**

**SOUTH CAROLINA PROCUREMENT REVIEW PANEL**

BY:   
**C. BRIAN MCLANE, SR., CHAIRMAN**

This 29<sup>th</sup> day of November, 2012.

Columbia, South Carolina