

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

In the Matter of Protest of:

Accessibility Consulting, LLC

College of Charleston  
RFP No. 12.19.MT.P  
Provide Professional Assessment for  
Americans with Disabilities Act (ADA)  
Compliance and Transition Plan  
Development

**BEFORE THE CHIEF PROCUREMENT OFFICER**

DECISION

CASE NO.: 2012-104

POSTING DATE: April 6, 2012

MAILING DATE: April 6, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Accessibility Consulting, LLC (Accessibility). With this request for proposals (RFP), the College of Charleston (CofC) attempts to procure professional assessment for Americans with Disabilities Act (ADA) compliance and transition plan. In the letter, Accessibility protested CofC's intent to award to EMG alleging three grounds, at least two of which are arguably directed at the evaluation of the award criteria listed in the RFP. As the protest grounds to be decided are clear, this decision is prepared after completion of an administrative review of the procurement file from CofC. A hearing is not necessary.

**NATURE OF PROTEST**

The letter of protest is attached and incorporated herein by reference.

**FINDINGS OF FACT**

The following dates are relevant to the protest:

1. On November 28, 2011, CofC issued the RFP. (Ex. 1)
2. On December 12, 2011, CofC issued Addendum #1, the only addendum to the RFP.

(Ex. 2)

3. On January 5, 2012, CofC opened the three proposals received.

4. On January 27, 2012, after evaluation of the proposals, CofC posted its intent to award to EMG for \$200,832. (Ex. 3)
5. On February 3, 2012, Accessibility submitted its protest to the CPO.

### **CONCLUSIONS OF LAW**

Accessibility protests CofC's intent to award to EMG alleging three grounds of protest:

[1] Accessibility Consulting, LLC bid a total of \$118,956 which is \$81,876 lower than the EMG bid. We have no knowledge that the EMG product would be any different from the Accessibility Consulting, LLC product; EMG's very thorough website has no mention of the Americans with Disabilities Act.

[2] EMG is located in Maryland; Accessibility Consulting, LLC is local in Mt. Pleasant, SC.

[3] None of the references on the Accessibility Consulting, LLC bid were contacted to verify if Accessibility Consulting, LLC was able to produce what was required.

CofC processed this procurement as a request for proposals (RFP), a source selection method authorized under the Consolidated Procurement Code. Relevant requirements of law regarding evaluation and award of proposals received in response to an RFP are as follows:

Evaluation Factors. The request for proposals must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor. Price may, but need not, be an evaluation factor.

Code Section 11-35-1530(5).

Selection and Ranking. Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award must be made in accordance with Section 11-35-1530(9) below.

Code Section 11-35-1530(7).

Award. Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into

consideration price and the evaluation factors set forth in the request for proposals.

Code Section 11-35-1530(9).

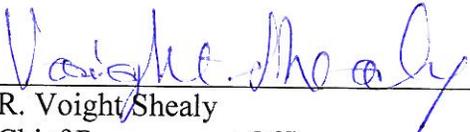
In the RFP, CofC listed the following award criteria: (A) Technical Quality of Proposal, (B) Offeror's Experience and Capabilities, (C) Timing, and (D) Financial. The RFP read further, "Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Award will be made based on the offer receiving the highest score on only items A-D." (Ex. 1, p. 16, Award Criteria)

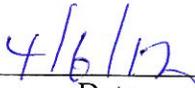
However, according to the evaluation score sheets and the composite results, the values assigned each evaluation criterion were Technical Quality of Proposal – 25 points, Offeror's Experience and Capabilities – 30 points, Timing – 20 points, and Financial Proposal – 25 points. The actual evaluation altered the relative order of importance of the evaluation criteria in violation of the Code and the RFP.

### **DETERMINATION**

The Code's requirement that the RFP announce the evaluation criteria in the order of importance simply requires the state to announce the relative value of each evaluation criterion and to actually evaluate proposals in accordance with its announcement. That did not occur in this case, as the evaluation altered the order of importance of the evaluation criteria. Consequently, the evaluation was conducted in violation of law and the RFP. *See In Re Protest of Systems & Methods, Inc.*, S. C. Procurement Review Panel Case No. 1989-8 (use of oral presentation as "tie-breaker" changed weighting of evaluation factors stated in RFP and therefore violated Procurement Code). It cannot stand.

Therefore, the protest is granted. CofC is directed to resolicit this requirement.

  
\_\_\_\_\_  
R. Voight/Shealy  
Chief Procurement Officer  
For Supplies and Services

  
\_\_\_\_\_  
Date

Columbia, S.C.

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised March 2012)*

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: [www.procurementlaw.sc.gov](http://www.procurementlaw.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 83.1 of the 2011 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2011 S.C. Act No. 73, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, an incorporated business must retain 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).

**Skinner, Gail**

---

**From:** Protest-MMO [Protest-MMO@mmo.sc.gov]  
**Sent:** Friday, February 03, 2012 10:46 PM  
**To:** \_MMO - Procurement; Shealy, Voight; Skinner, Gail  
**Subject:** FW: Protest for Solicitation 12.19.MT.P Issued Nov 28, 2011

-----  
**From:** Scott Fournier[SMTP:SFOURNIER12@COMCAST.NET]  
**Sent:** Friday, February 03, 2012 10:45:16 PM  
**To:** Protest-MMO  
**Cc:** 'Schumacher, Janet'  
**Subject:** Protest for Solicitation 12.19.MT.P Issued Nov 28, 2011  
**Auto forwarded by a Rule**

To Whom it May Concern,

Accessibility Consulting, LLC is protesting the award of Solicitation 12.19.MT.P "Assessment Services for ADA Compliance and Transition Plan" for the College of Charleston to EMG.

Accessibility Consulting, LLC bid a total of \$118,956 which is \$81,876 lower than the EMG bid. We have no knowledge that the EMG product would be any different from the Accessibility Consulting, LLC product; EMG's very through website has no mention of the Americans with Disabilities Act.

EMG is located in Maryland; Accessibility Consulting, LLC is local in Mt. Pleasant, SC.

None of the references on the Accessibility Consulting, LLC bid were contacted to verify if Accessibility Consulting, LLC was able to produce what was required.

I look forward to your response.

Thank you for your consideration

Scott Fournier

Accessibility Consulting LLC