

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In Re: Protest of Kennedy & Company
Education Strategies, LLC

CASE NO. 2015-141

POSTING DATE: April 30, 2015

MAILING DATE: April 30, 2015

Protest of Solicitation No. USC-RFP-2751-
CJ for Consulting Services for Palmetto
College at the University of South Carolina

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation is for Consulting Services for Palmetto College at the University of South Carolina (USC). Kennedy & Company Education Strategies, LLC (Kennedy) protests the award to E Consulting Inc. DBA EduServe (EduServe). [Attachment 1] The Chief Procurement Officer¹ issues this ruling without a hearing.

Findings of Fact

Request For Proposals Posted:	01/22/2015
Amendment 1 Posted	02/04/2015
Amendment 2 Posted	02/05/2015
Bid Opening	02/12/2015
Intent to Award Posted	03/20/2015
Protest Received	03/23/2015
Award Suspended	03/30/2015

Background

The University of South Carolina System (“USC”) has recently configured a new organization (“Palmetto College”) of its eight institutions around the state-four senior (USC-Columbia, Upstate, Aiken and Beaufort) and four regional (Lancaster, Sumter, Salkehatchie, and Union) campuses.

The goal of this project is to continue to increase the overall number of four-year baccalaureate degrees granted by Palmetto College and two year associate degrees granted by the Palmetto College campuses, maximize potential in already established programs, and maximize the return on investment.

Achievement of this objective will also improve Palmetto College’s ability to receive future

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

accountability-based funding from the State of South Carolina. This solicitation sought consulting services to assist with Strategic Planning, Enrollment Management Planning and Operations, and Financial Modeling. Kennedy protests that the cost scoring for the proposal was incorrectly calculated, based on two factors: (1) exclusion of travel and expense costs from the winning bidder's evaluated costs and inclusion of these costs for Kennedy & Company; and (2) inclusion of implementation costs related to separate implementation project phases from the second-place bidder, Kennedy & Company, and no inclusion of similar costs from the winning bidder.

Discussion

Kennedy proposed a fixed fee of \$260,000 “which is *inclusive* of any costs related to travel and related expenses.” Kennedy protests that travel and expenses were not included in EduServe's price evaluation. EduServe proposed “...a fixed price bid of \$87,560 including all expenses to complete all of the services necessary to deliver a final report to Palmetto College.” Travel and expenses were included in the price evaluation of EduServe's proposal. This issue of protest is denied.

Kennedy also protests that the costs associated with the implementation of its proposed recommendations were included in its cost evaluation, but the costs associated with the implementation of EduServe's proposed recommendations were not included in its cost evaluation. The University has acknowledged the accuracy of this assertion. Kennedy requested that the USC purchasing office, or the State Budget and Control Board, complete a new review of the costs evaluated for each proposal.

The solicitation only required a plan for implementing recommendations and a proposal for implementation support. It did not require pricing for recommendations that are yet to be developed:

Finally, the consultant (contractor) will provide a plan for implementing recommendations during the contract term based on decisions made by Palmetto College's leadership, as well as a proposal for implementation support that accompanies this plan.

[Solicitation, Page 12]

The proposed costs of implementation and support are clearly identified in Kennedy's proposal and can be easily deducted from its total proposed price as follows:

Project Component	Price
Strategic Enrollment Alignment for Palmetto College	\$120,000
Enrollment Strategy Implementation Support	\$40,000
Strategic Planning for Palmetto College	\$75,000
Strategic Planning Implementation Support	\$30,000
Financial Modeling	\$25,000
Discount for Completing All Phases Together (10%)	-\$30,000
Total	\$260,000

Deducting \$40,000 for Enrollment Implementation, \$30,000 for Strategic Planning Implementation, and adding back \$30,000 for completing all phases together (since the implementation phases are being deleted) results in a proposal price of \$220,000.

The University used a long-accepted formula in allocating the points allotted for price. The lowest responsive offeror received all the points available for price and the other offerors received a proportion of the points available for price based on their relationship to the lowest offeror. Plotinus Consulting, LLC submitted the lowest total cost proposal of \$83,800.00, and consequently the University awarded Plotinus the full 20 points for its Cost Proposal. If Kennedy's \$260,000.00 total cost is replaced with the \$220,000.00 figure described above, then Kennedy's Financial Proposal is scored as follows:

$$\$83,800 \div \$220,000 = 0.381$$

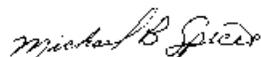
$$0.381 \times 20 = 7.62 \text{ points for Kennedy's Cost Proposal}$$

Kennedy received 223.5 points for the first two evaluation criteria. With the addition of the revised 7.62 points for each of the three evaluators, Kennedy's total points are 246.36. EduServe received 247.623 points and remains the highest ranked Offeror.

Determination

While there was an administrative error in calculating the points allocated for price, the recalculation did not result in a change in the ranking of the offerors and is considered harmless error. *See Appeal by First Sun EAP Alliance, Inc.*, Panel Case No. 1994-11 ("If an evaluator's score does not affect the outcome of the procurement, his conduct is harmless error and there is no need for review of the process.") Protest denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised October 2014)

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 209, 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 for 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.

KENNEDY & COMPANY

405 E. Luray Ave.
Alexandria, VA 22301

Phone: 703-623-5713
Fax: 703-740-5778

March 22, 2015
Mr. Mike Spicer
Chief Procurement Officer
Information Technology Management Office
South Carolina Budget & Control Board

Protest of Intent to Award of RFP 2751-CJ

Dear Mr. Mike Spicer,

I am writing today to formally protest the University of South Carolina's (USC's) *Intent to Award* statement for *RFP 2751-CJ*. After reviewing the scoring worksheet that USC (Charles Johnson) provided as well as USC's *Intent to Award* released on March 20, 2015.

I believe that the cost scoring for the proposal was incorrectly calculated, based on two factors: 1) exclusion of travel and expense costs from the winning bidder's evaluated costs and inclusion of these costs for Kennedy & Company and, 2) inclusion of implementation costs related to separate implementation project phases from the 2nd-place bidder, Kennedy & Company, and no inclusion of similar costs from the winning bidder. As you will see in the following paragraphs, this inconsistent scoring of evaluated costs was the sole reason that EduServe was named as the winning bidder in this RFP, over Kennedy & Company, who was the received the highest marks—by a wide margin, in all other scoring categories. Furthermore, Kennedy & Company was not contacted, ever, in regards to this proposal to provide clarification about its costs.

USC's *Intent to Award* cited a proposed cost of \$87,560 as the evaluated amount for the winning bidder. Based on the cited evaluated costs and your cost scoring methodology, it appears that USC included Kennedy & Company's travel and expense costs in the evaluated amount for Kennedy & Company. Had USC included travel and expenses in the winning bid's amount (an additional 20%), their cost score for each evaluator would have decreased from 19.14 to 15.85 per evaluator (3), resulting in a final total score that is 9.57 points lower, a 238. This factor, by itself, would have

resulted in Kennedy Company winning this bid. (Alternatively, if Kennedy & Company's travel and related expenses (20% of proposed fees, the same as EduServe's rate) are excluded from its proposal, this results in an increase in Kennedy & Company's score of 3.86 overall).

Next, it appears the winning bid did not include a proposal for implementation services or that the winning portion of the contract, which was for the evaluated price of \$87,560, did not include implementation services. Though I have not yet received the redacted version of the winning bid, your intent to award listed the following items as the scope of work matching the price of the winning bid:

- * Preparation
- * On-Campus and follow-up interviews
- * Review of Materials
- * Report writing and revisions
- * Final report presentation

None of these items appears to include implementation services, which appeared to be a *required* part of the requested proposal. (Nor do these items appear to include ongoing financial modeling support, also a requirement of the RFP.) USC's RFP-2751-CJ specifically asked for a proposal that included implementation support, on page 12 of its proposal: "Finally, the consultant (contractor) will provide a plan for implementing recommendations during the contract term based on decisions made by Palmetto College's leadership, as well as a proposal for implementation support that accompanies this plan."

As an aside, I would assume that your evaluators took note of EduServe's omission of an implementation plan and services in its scoring in the other scoring sections as well *and that you advised your evaluators that they could deduct points if required elements were missing.*

In its price portion of its bid, Kennedy & Company specifically enumerated the price for its services related to drafting a strategy and writing a report for Palmetto College and, separately, a price for its implementation services. The winning bid simply quoted a price for additional services on a per-hour basis of \$250 per hour. (Kennedy & Company also provided a per-hour amount for any services not specified, of \$225 per hour.)

Given that USC chose to evaluate a proposal that did not provide implementation support for a specific price, the right evaluation price for Kennedy & Company's proposal would have *excluded* implementation costs. EduServe, it would seem, derived a tremendous advantage by having any implementation costs *excluded from its evaluated price*. The pricing provided in Kennedy & Company's proposal is below.

Removing implementation support from Kennedy & Company's proposal lowers the price by \$70,000. When re-calculated using USC's cost scoring algorithm (lowest price/bidder price *20), this results in a new cost score for Kennedy & Company of 8.821 per evaluator versus the current score of 6.45. Overall, this increase (multiplied by 3, one for each evaluator) would

FINANCIAL PROPOSAL	
As compensation for providing the services described in our accompanying proposal document, we propose a fixed fee of \$260,000 which is <i>inclusive</i> of any costs related to travel and related expenses.	
Project Component	Price
Strategic Enrollment Alignment for Palmetto College	\$120,000
Enrollment Strategy Implementation Support	\$40,000
Strategic Planning for Palmetto College	\$75,000
Strategic Planning Implementation Support	\$30,000
Financial Modeling	\$25,000
Discount for Completing All Phases Together (10%)	-\$30,000
Total	\$260,000
Additional Implementation Support	<i>Not included in this proposal, but available as a service from Kennedy & Company for \$225/hour for all personnel</i>
Other Services	

result in a new score for Kennedy & Company that is 7.125 higher, resulting in a new final score of 249.96. **This would have made Kennedy & Company have the winning score for this proposal, even without considering travel and related expenses.**

In addition, should USC choose to compare the prices for implementation support as *Additional Tasks* as defined on page 11 of the RFP, I believe Kennedy & Company's rate for additional services of \$225 per hour, versus the

winning bid's rate of \$250/hour would also lead to Kennedy & Company having the winning bid.

In sum, Kennedy & Company believes USC made two errors in calculating the evaluated cost of each proposal. The first, related to travel and expenses that were not included in the winning bid's cost score, would have resulted in a 9.57 point *decrease* in the winning bid's score. The

second error was the inclusion of Kennedy & Company's implementation costs. Removing these from Kennedy & Company's evaluated cost would have resulted in a cost score for Kennedy & Company that is 7.125 higher (the sum of 3 evaluators), resulting in a total score of 249.96.

The final proposal score when the two corrections are made would be:

Kennedy & Company: 249.96 (Gains 7.125 points because of removal of implementation costs)

EduServe: 238.05. (Loses 9.57 points because of increased costs related to travel and expenses)

Kennedy & Company would have won this bid by almost 22 points had a true apples-to-apples comparison been applied.

Moreover, if your cost scoring chose to exclude Kennedy & Company's travel and expense costs and its implementation costs (and leave EduServe's proposal and evaluated costs as-is), the final proposal scoring would be as follows, based on an evaluated cost of \$158, 333 for Kennedy & Company:

Kennedy & Company: 255.3 (Excludes implementation and T&E costs)

EduServe: 247.6

Kennedy & Company would win this bid by 7.3 points.

Finally, it is unclear whether Kennedy & Company's 10% discount would still apply to its pricing if your cost comparison excluded implementation. As additional tasks are still on the table, USC would not have decided to include or exclude implementation at this point. However, even if USC increases Kennedy & Company's evaluated cost basis because it interprets the discount as no longer applicable, Kennedy & Company would still have the winning bid:

Kennedy & Company: 250.9 (Excludes implementation costs, travel & expenses, and a 10% discount)

EduServe: 247.6 (Original evaluated score)

As I hope I have demonstrated here, Kennedy & Company's bid should have been recognized as the winner, given a fair evaluation of costs based

on exclusion of implementation costs and travel and expense costs. (As shown in the scoring evaluations, Kennedy & Company was, on average 8.5 points higher than EduServe in the *Experience* category and 2.6 points higher in the *Qualifications* category. Kennedy & Company was also higher in than all other offerors in these categories.) A full detail of the evaluator scoring, as provided by USC's purchasing office subsequent to the *Intent to Award* release, is attached in Appendix A. Appendix B includes the full RFP.

However, given how close the final result was and the large differences between the bids in both scope and cost, I would have expected, at a minimum, that USC would have engaged in discussion with the most competitive bidders to clarify discrepancies in the bids, as allowed by section 11-35-1530, item number 6 of the South Carolina procurement code related to competitive sealed bids:

"(6) Discussion with Offerors. As provided in the request for proposals, and under regulations, discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. All offerors whose proposals, in the procurement officer's sole judgment, need clarification must be accorded that opportunity."

However, Kennedy & Company was not contacted, ever, to provide clarification of its bid and its costs.

Given that the USC purchasing office included implementation costs and travel and related expenses in its estimate of Kennedy & Company's evaluated costs but did not include similar costs in its evaluation of EduServe's proposal, I believe that the USC purchasing office did not act in the best interests of the State nor USC's Palmetto college in not proceeding with negotiations or clarifying conversations with multiple bidders, based on Section 11-35-1530, item 8 of the South Carolina procurement code:

(8) Negotiations. Whether price was an evaluation factor or not, the procurement officer, in his sole discretion and not subject to review under Article 17, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and

*negotiations submitted by competing offerors be disclosed...
...Part C: the procurement officer may make changes within the general
scope of the request for proposals and may provide all responsive offerors
an opportunity to submit their best and final offers."*

Given the glaring inconsistencies with which USC evaluated the price of these competing proposals, **Kennedy & Company requests that the USC purchasing office, or the State Budget and Control Board, complete a new review of the costs evaluated for each proposal.** Should additional information be required or should a best and final offer be requested, as allowed by South Carolina procurement code and *encouraged* by Section 11-35-1530, item 6, Kennedy & Company stands ready to comply.

In addition, based on a re-review of costs, Kennedy & Company requests that the Intent to Award issued by USC on March 20, 2015 be cancelled immediately and that a new determination of a winning bidder be made based on a consistent review of costs.

We look forward to your response to this bid protest.

Sincerely,



Benjamin Kennedy
President, Kennedy & Company

Kennedy & Company Education
Strategies, LLC
FEIN: 46-4288460

CC: Venis Manigo, Director of Purchasing, University of South Carolina
Charles Johnson, Purchasing Department, University of South Carolina

Appendix A – Scoring of RFP 2751-CJ Proposals

**CUMULATIVE EVALUATION COMMITTEE SCORING
SOLICITATION NO. USC-RFP-2751-CJ
CONSULTING SERVICES FOR PALMETTO COLLEGE**

**OFFEROR
E Consulting Inc. DBA
EduServe**

	Summer	Kevin	Kip
A. Offeror's Experience	42	30	45
B. Offeror's Qualifications	25.5	22.5	25.2
C. Cost Proposal	19.141	19.141	19.141
TOTALS	86.641	71.641	89.341
Grand Total	247.6		
=	23		

**OFFEROR
Kennedy & Company
Education Strategies, LLC**

	Summer	Kevin	Kip
A. Offeror's Experience	47.5	47.5	47.5

B. Offeror's Qualifications			28.5	25.5	27
C. Cost Proposal			6.446	6.446	6.446
TOTALS			82.446	79.446	80.946
	Grand Total	242.8			
	=	38			

**OFFEROR
Mindmax**

			Summer	Kevin	Kip
A. Offeror's Experience			35	25	25
B. Offeror's Qualifications			24	7.5	15
C. Cost Proposal			3.853	3.853	3.853
TOTALS			62.853	36.353	43.853
	Grand Total	143.0			
	=	59			

**OFFEROR
Plotinus Consulting
LLC**

			Summer	Kevin	Kip
A. Offeror's Experience			41	30	35
B. Offeror's Qualifications			24	22.2	21

C. Cost Proposal		20	20	20
TOTALS		85	72.2	76
	Grand Total			
	=	233.2		

**OFFEROR
The Educational
Alliance**

		Summer	Kevin	Kip
A. Offeror's Experience		36	30	42
B. Offeror's Qualifications		24	18	24.6
C. Cost Proposal		18.418	18.418	18.418
TOTALS		78.418	66.418	85.018
	Grand Total	229.8		
	=	54		