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## Protest Decision

**Matter of:** Protiviti, Inc.

**Case No.:** 2016-124

**Posting Date:** February 4, 2016

**Contracting Entity:** State Fiscal Accountability Authority's Division of Procurement Services

**Solicitation No.:** 5400010090

**Contract No.:** 4400012222

**Description:** Spend Analysis & Strategic Sourcing Services

### DIGEST

Protest alleging that awarded vendor's proposal included improper materials and that its price proposal was not properly evaluated is denied.

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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

## **DISCUSSION**

Protiviti Inc. protests the Intent to Award a contract to Treya Partners (Treya) for Spend Analysis & Strategic Sourcing Services at the Materials Management Office. Protiviti's letter of protest is incorporated by reference. [Attachment 1]

The Request for Proposals was issued to secure spend analysis and strategic sourcing services for the State Fiscal Accountability Authority's Division of Procurement Services. Responses were received from Huron Consulting Services, LLC; Sie Consulting Group, LLC; Protiviti, and Treya. Proposals were evaluated and scored by a committee of five evaluators. The evaluation criteria were published in the solicitation as follows:

### **EVALUATION FACTORS – PROPOSALS (JAN 2006)**

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous.

**A. Technical Quality of Proposal:** Offeror's general response to the proposal including any suggested changes or improvement to the proposed solution. The degree, completeness and suitability of the Offeror's proposal to meet or exceed the requirements technical approach/business plan of the solicitation will be evaluated.

**B. Experience and Qualifications:** Offeror's experience and references must provide evidence of its depth and breadth of spend analysis and strategic sourcing experience; and evidence of successful past performance in analyzing spend and generating savings. The evaluation panel will consider references from prior similar projects and results; range of experience with similar projects; and measurable accomplishments achieved in prior work. The abilities of the Offeror and the experience of the proposed project staff will be reviewed.

**C. Pricing Schedule:** Offeror's completion of the price proposal template.

Protiviti raises two issues of protest. First it claims that Treya submitted an improper offer, because Treya included three examples of spend analysis reports it had prepared on similar contracts. Protiviti characterizes these exemplar reports as "bid samples," which it says were prohibited by the terms of the RFP.

The solicitation instructions specifically instructed offerors not to submit bid samples or descriptive literature unless expressly requested and advised that:

*“Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D).”*

On January 15, 2015 the State provided Protiviti with Treya Partners proposal submission included in the submission were 3 separate samples – State of Connecticut May 7, 2015, State of Oklahoma Spend Assessment not dated, and State of Oklahoma Sourcing Implementation not dated.

(italics in original).

The clause cited by Protiviti is condensed from Regulation 19-445.2070(D) which reads in its entirety as follows:

D. The Invitation for Bids shall state that bid samples or descriptive literature should not be submitted unless expressly requested and that, regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature which are submitted at the bidder's risk will not be examined or tested, and will not be deemed to vary any of the provisions of the Invitation for Bids.

This Regulation applies to Invitations for Bid and allows the State to disregard any unsolicited materials. Its intent is to prohibit an offeror from altering specifications by attaching descriptive materials or samples that vary from the express terms of the IFB. This solicitation was a Request for Proposals and the information provided was submitted as examples of past work performed by Treya. There is no violation of the Code or Regulations and the submission was not improper. This issue of protest is dismissed.

Protiviti raises a second issue as follows:

*If the Division elects to continue the project after the completion of the spend analysis phase, the Contractor guarantees the State will achieve Actual Savings during this contract term sufficient to produce a minimum return on investment (ROI) in total project fees (including those for the spend analysis phase) of 2:1, unless a higher guarantee is included in its proposal. If the Division determines that the guaranteed ROI has not been reached by the end of the contract, the*

*Contractor shall return a portion of their fees within thirty (30) days such that the minimum ROI is met with the revised fee amount....*

Page 15 of the solicitation in the second paragraph under III. SCOPE OF WORK/SPECIFICATIONS states the following:

*“The South Carolina Restructuring Act of 2014 was signed into law on January 27, 2014. Section 25 states: (B)(1) By December 31, 2015, the State Fiscal Accountability Authority shall undertake a strategic sourcing initiative through which it must analyze the state’s current spending on various categories or goods and services, identify the greatest opportunities to leverage the state’s purchasing power, and prioritize the state’s subsequent efforts to maximize achievable savings.”*

Treya Partners proposal states on page 91

*“J. Guaranteed Savings ROI  
Treya is happy to guarantee a minimum return on investment (ROI) in total project fees including those for the spend analysis phase of 2:1.”*

Based on the Intent to Award notice dated January 8, 2016 Treya Partners price is \$202,776. This means that Treya Partners guaranteed savings for South Carolina at this point is \$405,552.

Whereas Protiviti’s price proposal is guaranteeing \$3,417,780 dollars in savings, which is over \$3 million more than Treya Partners. Based on the State’s desire to “maximize achievable savings” and to award based on best value for the citizens of South Carolina Protiviti has clearly demonstrated the best value.

**Summation:**

The State of South Carolina initiated the Spend Analysis and Strategic Sourcing program with the intent of working with a qualified provider that maximizes the savings for South Carolina. Protiviti response has demonstrated that Protiviti is qualified and provides best value by guaranteeing 8 times the savings Treya Partners has guaranteed. In fact, based on the scoring the State provided, Treya is lowest guaranteed savings of any proposal submitted – which is contrary to the Restructuring act of 2014.

(italics in original).

Section 11-35-1530((9) requires that:

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, unless the procurement officer determines to utilize one of the options provided in Section 11 35 1530(8).

The solicitation requirement was for the contractor to guarantee a ROI of 2:1 or higher. Treya agreed to meet the minimum 2:1 ROI as required by the solicitation. The evaluation criteria did not specifically identify an evaluation of the ROI. The solicitation included a price proposal template to be used in scoring the price proposals. The price proposal template did not include consideration of the ROI in the price evaluation.<sup>2</sup> The evaluation criteria were published in the solicitation. If Protiviti felt that the ROI should have been the major factor in the evaluation, it had the opportunity to raise that issue during the solicitation phase of the procurement. Section 11-35-4210(1)(b) states:

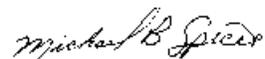
(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to 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). The CPO cannot consider this issue since it could have been raised as a protest of the solicitation.

## DECISION

For the reasons stated above, the protest is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

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<sup>2</sup> The CPO notes that evaluation of the ROI was performed as part of the evaluation of criteria one: Technical Quality of Proposal.

## Attachment 1

**From:** [Donachie, Bernie \(10100\)](#)  
**To:** [Protest-MMQ; Adams, Stacy](#)  
**Subject:** Protest of Award for Solicitation 5400010090  
**Date:** Tuesday, January 19, 2016 12:12:58 PM

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After considerable review of the Treya Partners Proposal dated October 1, 2015 in response to Solicitation 5400010090 (provided to Protiviti on January 15, 2016). Protiviti is formally protesting the award to Treya Partners.

The grounds for this protest can be explained as follows:

1. Treya Partners submitted an improper offer

The solicitation instructions specifically states on page 10 ***"RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)"***

*"(f) Do not submit bid samples or descriptive literature unless expressly requested. Unsolicited bid samples or descriptive literature will not be examined or tested, will not be used to determine responsiveness, and will not be deemed to vary any of the provisions of the solicitation. S.C. Code Ann. Reg. 19-445.2077(D)."*

On January 15, 2015 the State provided Protiviti with Treya Partners proposal submission included in the submission were 3 separate samples – State of Connecticut May 7, 2015, State of Oklahoma Spend Assessment not dated, and State of Oklahoma Sourcing Implementation not dated.

2. Treya Partners is not the best value for South Carolina based on the ROI guarantee.

Page 23 of the solicitation states the following:

***"C.10 Guaranteed Savings ROI***

*If the Division elects to continue the project after the completion of the spend analysis phase, the Contractor guarantees the State will achieve Actual Savings during this contract term sufficient to produce a minimum return on investment (ROI) in total project fees (including those for the spend analysis phase) of 2:1, unless a higher guarantee is included in its proposal. If the Division determines that the guaranteed ROI has not been reached by the end of the contract, the Contractor shall return a portion of their fees within thirty (30) days such that the minimum ROI is met with the revised fee amount.*

- a) The guaranteed ROI will be calculated by dividing total actual savings by total payments to the Contractor, including payments for non-sourcing work such as the spend analysis phase.*
- b) The savings measurement period for the purposes of validating the guaranteed ROI is from the start date of the spend analysis phase to the end of the strategic sourcing phase. Savings achieved during the term of any contract extensions for the Contractor will not be counted towards the guaranteed ROI.*
- c) Should the Division elect to halt savings creation efforts on a specific expenditure category and pay the Contractor pro rata fees, such pro rata payments will be deducted*

*from the total payments to the Contractor in calculating the ROI.”*

Page 15 of the solicitation in the second paragraph under **III. SCOPE OF WORK/SPECIFICATIONS** states the following:

*“The South Carolina Restructuring Act of 2014 was signed into law on January 27, 2014. Section 25 states: (B)(1) By December 31, 2015, the State Fiscal Accountability Authority shall undertake a strategic sourcing initiative through which it must analyze the state’s current spending on various categories or goods and services, identify the greatest opportunities to leverage the state’s purchasing power, and prioritize the state’s subsequent efforts to maximize achievable savings.”*

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**Summation:**

The State of South Carolina initiated the Spend Analysis and Strategic Sourcing program with the intent of working with a qualified provider that maximizes the savings for South Carolina. Protiviti response has demonstrated that Protiviti is qualified and provides best value by guaranteeing 8 times the savings Treya Partners has guaranteed. In fact, based on the scoring the State provided, Treya is lowest guaranteed savings of any proposal submitted – which is contrary to the Restructuring act of 2014.

Having worked with multiple public sector clients I know and appreciate the seriousness of the protest process. More specifically, I understand how protests may cause delays and challenge the evaluator’s decision. However, based on the requirements set forth in the solicitation Protiviti is a substantially better value for South Carolina.

I look forward to hearing from and working with the State on this protest.

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**Bernard J. Donachie**  
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## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised September 2015)*

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 2015 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**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

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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: \_\_\_\_\_

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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.**