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## Protest Decision

**Matter of:** Tidwell & Associates, Inc.

**Case No.:** 2017-122

**Posting Date:** January 10, 2017

**Contracting Entity:** South Carolina Department of Education

**Solicitation No.:** 5400012218

**Description:** School District Efficiency Review

### DIGEST

Protest of an award alleging successful bidder was non-responsive and non-responsible is denied. Tidwell & Associates, Inc.'s (Tidwell) letter of protest is included by reference. [Attachment 1]

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

## BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	09/28/2016
Amendment 1 Issued	10/09/2016
Amendment 2 Issued	10/11/2016
Amendment 3 Issued	10/14/2016
Intent to Award Posted	11/18/2016
Protest Received	11/28/2016

Part 1B, Section 1, Proviso 1.92 of the 2016-17 General Appropriations Act, directs the South Carolina Department of Education to contract for a review of the central operations of at least 34 school districts across the state. The proviso requires the written review, including specific recommendations for improving operational efficiencies, to be completed by April 1, 2017:

**1.92.** (SDE: Facilities Tracking System and Assessment Assistance) Of the funds appropriated to the department for Facilities Assessments and Efficiency Studies, the department is directed to issue a RFP to contract with one or more vendors to complete the reviews. The Facilities Assessments shall include, at a minimum: (1) facilities use and management; (2) energy management; (3) site review when needed; and (4) any technology needs and infrastructure as aligned to the district technology plan and the district technology assessment. The Efficiency Studies shall include, at a minimum: (1) overhead; (2) human resources; (3) procurement; (4) financial management; and (5) transportation and must be aligned to any diagnostic review that may be conducted in the district to avoid duplication. The Assessments and Studies shall be first conducted in school districts which are or were the Abbeville Plaintiff District and prioritized according to the prior year poverty index and for districts that have not had an efficiency study or facility assessment completed in the last two years. The completed Assessments and Studies shall be provided to each local school board of trustees and shall inform funding decisions for facilities and potential school or district consolidation. The department shall make the Assessments and the Studies available on the department website.

The Department issued its RFP in September 2016. It received proposals from four offerors. A team of five evaluators reviewed and ranked the proposals. The Department posted an Intent to Award to the highest ranked offeror, Alvarez & Marsal Public Sector Services, LLC (A&M). Tidwell timely protested the award. Tidwell alleges that A&M is non-responsive to the material requirements of the solicitation, because of the information it submitted in response to Part IV of

the RFP. It also claims that A&M failed to meet special standards of responsibility stated in Part V of the solicitation.

## ANALYSIS

### UNIFORM SOLICITATION FORMAT

Under the State's Uniform Solicitation Format, procurement officers are encouraged to include all the material and essential requirements of the contract in Part III, titled "Scope of Work / Specifications." To be responsive, an offeror must agree to perform all of the work described in Part III:

"Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all *material* aspects to the invitation for bids or request for proposals.

S.C. Code Ann. § 11-35-1410(7) (2012) (emphasis supplied).

Part IV of the State's uniform format lists materials the agency requires in order to evaluate an offer. In fact, Part IV of this RFP begins with a clause titled "Information for Offerors to Submit – *Evaluation*." RFP, page 21 (emphasis supplied). It specifically informs bidders:

In addition to information requested elsewhere in this solicitation, offerors should submit the following information *for purposes of evaluation* ....

*Id.* (emphasis supplied).

Part V of the solicitation is titled "Qualifications." Generally, these provisions describe the information a procurement officer may use to determine if an offeror is *responsible*. A responsible bidder is defined in Section 11-35-1410(6) as:

"Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

This RFP also included special standards of responsibility. Special Standards of Responsibility are defined by Regulation 19-445.2125(F):

#### Special Standards of Responsibility

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

The RFP articulated the following special standards:

1. The Offeror must have 3 years of experience or have performed three (3) similar reviews of similar size/scope.
2. The Offeror must have a background in education administration, finance or comparable area of study.
3. The Offeror must propose a Project Coordinator who meets the following minimum qualifications:
  - i) extensive and thorough knowledge of the Offeror's operation;
  - ii) experience conducting similar reviews
  - iii) background in education administration and/or finance; and
  - iv) effective managerial skills, including the ability to initiate scheduled activities, creatively solve problems, and collaborate with individuals.

#### RESPONSIVENESS

Tidwell alleges that A&M's proposal is non responsive in three respects. First, A&M provided inadequate reference information; second, it failed to provide sufficient information about the staff it planned to assign to the project; and third, it failed to identify subcontractors it intended to use. For these complaints to affect A&M's responsiveness, they must be material requirements of contract performance.

The Procurement Review Panel addressed the issue of the materiality of a requirement in *Appeal by Coastal Rapid Public Transit Authority and Anderson-Oconee Council on Aging*, Panel Case No. 2000-4:

A “responsive bidder or offeror” is defined in § 11-35-1410(7) as “a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or requests for proposals.” Section 11-35- 1520(13) of the South Carolina Consolidated Procurement Code provides for the waiver or curing of minor informalities and irregularities in bids and proposals. That section provides in relevant part:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State.

Section 11-35-1520 then sets forth a non-exclusive list of examples of minor informalities or irregularities.

The Panel has read these two sections of the Procurement Code together to arrive at the following conclusions:

In order to be responsive, a proposal need not conform to all of the requirements of the RFP; it must simply conform to all of the essential requirements of the RFP...[B]ecause the Code requires rejection of a proposal when it fails to meet an essential requirement but allows waiver of an immaterial variation from exact requirements, a requirement is not “essential” if variation from it has no, or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured. Waiver or correction of a variance from such a requirement is appropriate under the Code when relative standing or other rights of the bidders are not prejudiced.

Protest of National Computer Systems, Inc., Case No. 1989-13.

In the National Computer case, the Panel determined that a requirement is not “essential” simply because the RFP states that it is mandatory.

(footnotes omitted).

Tidwell’s first three allegations of non-responsiveness are based on its claim A&M failed to provide references requested in Part IV of the RFP; and that the management and staffing plan A&M submitted was deficient. Furnishing references is not a material and essential requirement

of the contract. Its omission has no effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured. As expressed in the solicitation, it is information the Department uses to evaluate the proposal. The management and staffing plan likewise was information the Department requested to evaluate the ability of offerors to perform the work. The evaluation may reflect any deficiencies in the information provided. Unless the information somehow evidences an offeror's refusal to perform the contract requirements, though, its adequacy has no impact on contract performance.<sup>2</sup>

Tidwell's final claim of non-responsiveness alleges that:

On information and belief, having staffing "TBD," A&M will have to have contractors that will exceed 10% of the cost of the work, and who will have access to "government information" as defined in the RFP....

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<sup>2</sup> Even if Tidwell were correct that A&M's reference submittals are somehow material requirements of the contract, its allegations fail to establish those references are "non-responsive." Tidwell first claims that the following provision in paragraph 2(b) of Part IV requires information about completed projects:

- 2) Offeror's Qualifications
  - b) Provide at least three professional references of entities that have procured prior and similar work with the Offeror.

The requirement is for references that have *procured* prior and similar work. Section 11-35-310(24) defines procurement to mean "buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services, information technology, or construction...." Similarly, Black's Law Dictionary defines procurement as "The act of getting or obtaining something." The RFP requirement does not stipulate that the referenced work be completed.

Second, Tidwell claims that the same solicitation provision requires information about "projects similar in scope and services." However the requirement, quoted above, is only for "prior and similar work." The solicitation seeks proposals for "School District Efficiency Review." A&M's references were for facilities assessments and efficiency studies.

Next, Tidwell attacks the sufficiency of A&M's management plan and staffing: "Other than the key personnel listed in its proposal, nowhere has A&M identified the number of personnel it will use to carry out the requirements of the RFP within the time frame identified in the RFP." The requirement, in paragraph 4 of Part IV, included the following:

At a minimum, the Offeror must propose one staff member to coordinate the tasks necessary to fulfill this project. This staff member must serve as the Project Coordinator and be the key contact with the SDE. Provide evidence that the proposed Project Coordinator meets the mandatory minimum qualifications.

Solicitation, p. 21 (emphasis supplied). A&M proposed Erin Covington as the project coordinator, thereby meeting the RFP's stated minimum requirement. As discussed below, it provided information establishing that Ms. Covington meets the special standards of responsibility required by the solicitation. Additionally, A&M provided management and staffing plans and identified key personnel. The adequacy and quality of the information provided is a matter for consideration by the evaluation committee.

This claim is nothing more than conjecture and fails to meet the burden of proof.

Tidwell's protest that A&M's proposal is non-responsive is denied.

#### SPECIAL STANDARDS OF RESPONSIBILITY

TA next alleges that A&M is a non-responsible bidder for failure to meet special standards of responsibility:

A&M neither has 3 years of experience in school district efficiency services nor 3 similar size/scope projects that have been performed.

This is the actual RFP requirement:

The Offeror must have 3 years of experience *or* have performed three (3) similar reviews of similar size/scope.

Solicitation, p. 24 (emphasis supplied). A&M's proposal includes a statement that "In 2003, Alvarez & Marsal launched a group specifically devoted to serving the unique needs of the public sector. A&M Public Sector Services, LLC provides strategic financial management, crisis management, and performance improvement services to federal, state, and local governments and non-profit organizations." [Technical Proposal, Page ii] A&M included references to work it performed for the Charleston County School District, the SC Department of Health and Human Services, the South Carolina Department of Employment and Workforce, the New York City Department of Education, Los Angeles Unified School District, and New Orleans Public Schools in its transmittal letter. A&M also included reference projects with the State of Kansas, Newark Public Schools, and the Prince William County Schools. A&M provided information both that it has more than three years of experience, and that it has performed more than three similar reviews. This issue of protest is denied.

Finally, Tidwell alleges that A&M's proposed project coordinator, Erin Covington, does not have experience conducting similar reviews as required by the special standards of responsibility:

The A & M proposal lists her experience conducting similar reviews as: “Within the past few years, Ms. Covington has successfully conducted reviews for the Newark Public Schools (this project has not been completed). It also states, she has completed several school district studies in the state of New Mexico and Kansas, but provides no evidence that these are similar reviews.

A&M included the following information about Ms. Covington:

Erin Covington has 18+ years of experience serving in key leadership positions and providing management and advisory services for public sector and commercial clients. Erin’s primary focus is on education and she has extensive experience in the K-12 and post-secondary sectors—some of her clients include Newark Public Schools, New York City Department of Education, Prince William County, VA Public Schools, Howard University, Antioch College and the State of New Mexico Department of Education. Erin specializes in leading financial and strategic planning efforts, the development of complex resource allocation models and liquidity management

Prior to joining A&M, Ms. Covington served as CFO of a charter school organization in Washington, D.C. and CFO for a leading think tank based in Washington, D.C. Before that, Erin worked in the financial reporting division for a major energy trading company and as a consultant at KPMG.

## **RELEVANT EXPERIENCE**

### ***Newark Public Schools***

- Serves as financial advisor where she has developed a plan to address a material budget deficit facing the organization
- The plan led to the identification of new revenue totaling \$40 million as well as the identification of cost savings opportunities totaling \$26 million.

### ***Friendship Public Charter Schools***

- Served as Chief Financial Officer (CFO) and led the completion of a \$36 million public bond offering, driving the resolution of a material weakness in federal grants management, and significantly improving working capital management. This resulted in the increase of unrestricted liquidity from 15 to 110 days cash on hand.

### ***New York City Department of Education***

- Served as Deputy Chief Restructuring Officer of Finance



- Oversaw the strategic planning and financial management work streams leading to the successful identification and implementation of \$290 million in cost savings. Implemented new weighted student funding model for 1,400+ schools.

***Howard University***

- Served as financial advisor to Howard University helping to address liquidity shortfall.

[A&M Technical Proposal, Appendix B]

Ms. Covington clearly exceeds the mandatory minimum of 3 years of experience and shows emphasis in financial management. The evaluation committee found Ms. Covington's level of experience acceptable. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of Tidwell & Associates, Inc. is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

Attachment 1



November 28, 2016

M. Elizabeth Crum

Via e-mail and hand delivery

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John St. C. White  
Interim Materials Management  
Officer and State Engineer  
SC Budget & Control Board  
Division of Procurement Services  
1201 Main Street, Suite 600  
Columbia, SC 29201

Re: Protest of Notice of Intent to Award Solicitation 540012218—School  
District Efficiency Review (RFP) to Alvarez & Marsal.

Dear Mr. White:

On behalf of our client, Tidwell & Associates (Tidwell), we submit the initial protest, pursuant to S.C. Code Ann. § 11-35-4210 (Supp. 2006), to the determination of the South Carolina Department of Education (SDE) to award the contract from the above referenced RFP<sup>1</sup> to Alvarez & Marsal (A&M). The Notice of Intent to Award (Notice) was posted on November 18, 2016. Based on the grounds set forth below, A&M is a non-responsive and non-responsible offeror not eligible to receive the award and should not have been evaluated. Pursuant to the South Carolina Procurement Review Panel’s long standing decision in *Carter Goble*, the award to A&M should be cancelled and the RFP resolicited.

RECEIVED BID CONTROL

BACKGROUND

This RFP was required by the General Assembly in the 2016-2017 General Appropriations Act. The RFP states: “The review is required pursuant to Part 1B Section 1 Proviso 1.92 of the 2016-17 General Appropriations Act, which follows.”

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McNAIR LAW FIRM, P.A.  
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Suite 1600  
Columbia, SC 29201

1.92. (SDE: Facilities Tracking System and Assessment Assistance) Of the funds appropriated to the department for Facilities Assessments and Efficiency Studies, the department is directed to issue a RFP to contract

Mailing Address  
Post Office Box 11390  
Columbia, SC 29211

mcnair.net

<sup>1</sup> A copy of the RFP is attached as Ex. 1.

with one or more vendors to complete the reviews. The Facilities Assessments shall include, at a minimum: (1) facilities use and management; (2) energy management; (3) site review when needed; and (4) any technology needs and infrastructure as aligned to the district technology plan and the district technology assessment. The Efficiency Studies shall include, at a minimum: (1) overhead; (2) human resources; (3) procurement; (4) financial management; and (5) transportation and must be aligned to any diagnostic review that may be conducted in the district to avoid duplication. The Assessments and Studies shall be first conducted in school districts which are or were the Abbeville Plaintiff Districts and prioritized according to the prior year poverty index and for districts that have not had an efficiency study or facility assessment completed in the last two years. The completed Assessments and Studies shall be provided to each local school board of trustees and shall inform funding decisions for facilities and potential school or district consolidation. The department shall make the Assessments and the Studies available on the department website.

Ex. 1, RFP, III. SCOPE OF WORK/SPECIFICATIONS, p. 16 (hereinafter referred to as "Proviso"). The Proviso does not specify a time by which the study must be completed. The Proviso requires that "the review of districts expenditures and operations of at least 34 school districts<sup>2</sup> must include examination and analysis of:

- (1) overhead;
- (2) human resources;
- (3) procurement;
- (4) financial management;
- (5) transportation; ... "

*Id.* (Emphasis added). The scope of the RFP is for the offeror to provide Efficiency Studies of not less than each of the 34 school districts that are/were plaintiffs in the Abbeville School District litigation and the efficiency studies must cover the areas of 1) overhead; 2) human resources; (3) procurement; (4) financial management; and (5) transportation.

#### PROTEST GROUNDS

A. **A&M IS A NON-RESPONSIVE OFFEROR.** A&M is non-responsive to the essential requirements of the RFP set forth below and should have been determined to be non-responsive pursuant to S.C. Code Ann. § 11-35-1530(7) and S.C. Code Ann. Reg. § 19-445.2095(J)(4)(b) because the A&M proposal does not meet the below discussed RFP requirements in material respects.

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<sup>2</sup> The 34 school districts involved are names plaintiffs in the Abbeville law suit.

1. **Offeror's Qualifications.** To be responsive to the qualification criteria, A&M had to "[p]rovide at least three professional references of entities that have procured prior and similar work with the Offeror." Emphasis added. Ex. 1, RFP, IV. INFORMATION FOR OFFERORS TO SUBMIT Volume I – Technical Proposal 2) Offeror's Qualifications b), p. 21. To be responsive to the minimum qualification requirements, an offeror has to have three (3) referenced projects that both have been completed and are similar to the services required by the Proviso and RFP. On page 2 of the A&M proposal, it states that the information showing its qualifications regarding this responsiveness requirement is contained in Appendix A to its proposal. See Ex. 2,<sup>3</sup> p. 2. The three references contained in Appendix A are Kansas State Government Efficiency Study, Newark Public Schools and Prince William County Public Schools as its three (3) reference that procured prior and similar services to those required by the Proviso and the RFP.

a. *A&M's proposal does not reference 3 completed projects.* As a review of Appendix A clearly demonstrates, A&M has not submitted references for three entities that procured "similar" services and for which they have completed the services. See Ex. 2, Appendix A. Two of the provided references (Newark Public Schools and Prince William School District) are ongoing projects and do not meet the requirement of "procured" projects. The proposal is non-responsive to this requirement.

b. *A&M's proposal does not reference 3 projects similar in scope and services.* A&M' proposal does not demonstrate that it has completed similar work to the entities listed in its proposal nor did it "provide 3 references where it has performed 3 similar reviews of similar size /scope." What constitutes "similar services" for purposes of this RFP is set forth in the Proviso and on p. 21 of the RFP. The referenced projects provided as part of Appendix A are discussed below.

i. **Kansas State Government Efficiency Review.** This review for the reference was a state level study and was not at the district operations level as required by the RFP. A&M' report consists of 3 three recommendations all of which are non-school district operations.

- Consolidate disparate health insurance and benefit plans within the various school districts budgets within the State's Health insurance and benefits plan.
- Consolidate statewide procurement.
- Consolidate the purchasing of property and casualty insurance under a pool program. In their report on page 8 of the Kansas report, it says in Education over a 5 year period for the entire state, a savings of \$609,495 in Education recommendations.

This referenced project is not of similar scope or size and cannot be counted as such for purposes of responsiveness.

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<sup>3</sup> A copy of referenced pages from the A&M proposal is contained in Ex. 2.

ii. **Newark Public Schools:** As noted above, this project started Oct 1, 2015 and is still ongoing and is not an example of a *completed* school district operational study. Additionally, it is a study of only 1 school district (“contracted to perform consulting services to the District”). Ex. 2, Newark Public Schools, Project Background. This is not a referenced project that is completed and cannot be counted as such.

iii. **Prince William School District:** Not only is this study still ongoing, it is a staffing study (“Prince William County Public Schools (PWCS) had been cast publicly as being overstaffed in the central office functions” the study “sought out an independent analysis and verification of the staffing levels in comparison to relevant school district benchmarks.” Ex. 2, Appendix A, Prince William County Public School Project Background. A&M did not provide services of a similar size (only 1 school district) or services. PWCS cannot be counted as a completed project or as a project of similar size and scope.

2. **Proposed Personnel.** The RFP requires that the “offeror must propose a management plan and adequate staffing to execute the requirements of this RFP within the designated timeframe.” Ex. 1, RFP, INFORMATION FOR OFFERORS TO SUBMIT Volume I – Technical Proposal 4) Proposed Personnel, p. 21. Other than the key personnel listed in its proposal, nowhere has A&M identified the number of personnel it will use to carry out the requirements of the RFP within the time frame identified in the RFP. In fact, certain of their senior staffing personnel (senior director and directors) are “TBD”. Ex. 2, p. 31-34.

The RFP further requires:

The Offeror must submit a staffing plan that clearly delineates the management structure. In this plan, the Offeror must specify:

1. the duties and roles of each individual who is assigned to the project;
2. the hours that key personnel will be committed to the project;
3. the qualifications, experience, and a resume for all key personnel; and
4. the overall capabilities of the selected staff to carry out this project.

Provide evidence that the individuals conducting the review can effectively evaluate at least the following non-instructional operational areas of a school district:

- a) overhead;
- b) human resources;
- c) procurement;
- d) financial management;
- e) transportation



Ex. 1, p. 22. (Emphasis added).

A&M provided its staffing plan and stated that it would be “comprised of a small team led by seasoned operators: ...” Ex. 2, p. 31. The staffing plan divides the 82 school districts in the State into 8 District groups, each headed by a “Director”. Of the 8 groups only 2 directors are named, with the other 6 directors “TBD<sup>4</sup>”. Ex. 2, p. 32. The “senior Director” is also “TBD”. Clearly, the proposal does not “provide evidence that the individuals conducting the review can effectively evaluate” the efficiency studies, since the Senior Director nor the Directors are named, nor are resumes provided for any of them. See Ex. 2, pp. 33–34. Further, while the hours for the 2 named District group directors were listed, there is no way to determine whether the number of hours for the other District group Directors will be the same, particularly since the pricing for district studies varies, thus indicating that the number of hours per district varied.

Further, A&M has not provided the qualifications, experience, and a resume for all key personnel. For the District Group containing districts 1-10 and 11-20, the A&M proposal names Nancy Zielke and Penelope Thornton Talley and by each has a “\*”. As the “key” to Figure 8 detailing the “staffing plan” clearly states: “\*=key personnel”. Seven (6 District group Directors and the Senior Director) of the “key personnel” listed in A&M’s staffing plan are “TBD”. On page 34 of its proposal, A&M only lists 4 people as key personnel. However, two of those “key personnel” are Penelope Thornton Talley and Nancy Zielke—two of the 8 District group directors.

Finally, not having listed 6 of the 8 district directors and the Senior Director, much less any of the managers or associates, A&M proposal certainly does not “provide evidence that the individuals conducting the review can effectively evaluate at the least” the minimum 5 areas to be reviewed as part of the efficiency studies for each school district. Further, the proposal clearly has not specified “the duties and roles of each individual who is assigned to the project”, since it does not even identify the individuals assigned to the project. The A&M proposal is non-responsive to the Proposed Personnel requirement of the RFP.

3. Subcontractors. The RFP provides:

If you intend to subcontract, at any tier level, with another business for any portion of the work and that portion either (1) exceeds 10% of your cost, (2) involves access to any “government information,” as defined in the clause entitled “Information Security - Definitions,” if included, or (3) otherwise involves services critical to your performance of the work (err on the side of inclusion), your offer must identify that business and the work which they are to perform. Identify potential subcontractors by providing the business name, address, phone, taxpayer identification number, and point of contact. In determining your responsibility, the state may contact and evaluate your proposed subcontractors.

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<sup>4</sup> In common parlance, “TBD” means to be determined.

Ex. 1, RFP, QUALIFICATIONS, Subcontractors, p. 24. On information and belief, having staffing "TBD", A&M will have to have contractors that will exceed 10% of the cost of the work, and who will have access to "government information" as defined in the RFP. In addition, the third requirement above states that subcontractors who provide services critical to the performance of your work must have the above information provided, and A&M did not provide the information for the senior director and other directors to be determined.

**B. A&M IS A NON-RESPONSIBLE OFFEROR.** This RFP contains "Special Standards of Responsibility. These standards provide:

(a) In order to be qualified to receive award, you must meet the following mandatory minimum qualifications:

1. The Offeror must have 3 years of experience or have performed three (3) similar reviews of similar size/scope.
2. The Offeror must have a background in education administration, finance or comparable area of study.
3. The Offeror must propose a Project Coordinator who meets the following minimum qualifications:
  - i) extensive and thorough knowledge of the Offeror's operation;
  - ii) experience conducting similar reviews;
  - iii) background in education administration and/or finance; and
  - iv) effective managerial skills, including the ability to initiate scheduled activities, creatively solve problems, and collaborate with individuals.

Ex. 1, RFP, V. QUALIFICATIONS – SPECIAL STANDARDS OF RESPONSIBILITY, p. 24. (Emphasis added). S.C. Code Ann. Reg. 19-445.2125(F) governs the requirements of special standards of responsibility and provides:

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

Clearly, this special standard is specific, objective and mandatory.

Page 8 and Appendix B shows that Erin Covington, their proposed project coordinator, does not have experience conducting similar reviews. See Ex. 2, p. 8 and Appendix B. Her biography lists the following:

- Newark Public Schools (this is a project unfinished to date)
- Friendship Charter Schools-She served as the CFO, but this is not a similar study.
- NY Department of Education-Served as a CFO, but this is not a similar study.
- Howard University-served as a financial advisor . this is not a similar study.

The A & M proposal lists her experience conducting similar reviews as : "Within the past few years, Ms. Covington has successfully conducted reviews for the Newark Public Schools (this project has not been completed). It also states, she has completed several school district studies in the state of New Mexico and Kansas, but provides no evidence that these are similar reviews.

The RFP establishes minimum qualifications for an offeror to be eligible to receive the contract award. Part V "Qualifications" (a)1 provides "The Offeror must have 3 years of experience or have performed three (3) similar reviews of similar size/scope." A&M neither has 3 years of experience in school district efficiency services nor 3 similar size/scope projects that have been performed. See discussion above in ground A.1.

#### CONCLUSION

As demonstrated above, A&M's proposal is non-responsive to the material requirements of the RFP and as regards the special conditions of responsibility of this RFP, A&M's proposal did not meet the responsibility requirements and is a non-responsible offeror. Pursuant to Protest of Carter Goble Associates, Inc., Case No. 1989-25, the award to A&M should be withdrawn and the RFP resolicited. With best regards,

Sincerely,



M. Elizabeth Crum

MEC:lf

Cc: Ritchie Tidwell  
The Hon. Molly Spearman—Via USPS  
Cathy Lynn Hazelwood, Esquire—Via E-mail  
Elise Montgomery—Via E-mail  
Dixon Robertson, Esquire—Via E-mail



## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised November 2016)*

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 2016 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  
1205 Pendleton Street, Suite 473, Columbia, SC 29201**

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\_\_\_\_\_  
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.**