

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Protest Decision

Matter of: Automatic Synch Technologies, Inc.

Case No.: 2017-155

Posting Date: July 10, 2017

Contracting Entity: South Carolina Department of Education

Solicitation No.: 5400013380

Description: Closed Captioning Services

DIGEST

Protest requesting modification of specifications after award is denied. Automatic Synch Technologies' (AST) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on a review of procurement documents and applicable law and precedents.

¹ 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	05/01/2017
Amendment One Issued	05/23/2017
Intent to Award Issued	06/06/2017
Protest Received	06/12/2017

ANALYSIS

This solicitation was issued by the South Carolina Department of Education to acquire closed captioning services. An Intent to Award was posted to Kaltura, Inc. on June 6, 2017. AST protests on June 12, 2017, that the while the stated intent of the solicitation is to “meet accessibility requirements” and the solicitation required at least a 95% accuracy rate, a 95 % accuracy is extremely poor and falls below an acceptable standard to provide effective and equal communications for users of captioning as required by the ADA.

The solicitation was posted on May 1, 2017 and included the following requirements:

These video and audio components require transcripts, closed captioning and searchable metadata to meet accessibility requirements.

[Solicitation, Page 5]

Many courses offered by VirtualSC contain video and audio components and require transcripts, closed captioning and searchable metadata to meet accessibility requirements.

[Solicitation, Page 5]

3.1.5 The captioning must be done by humans and have at least 95% accuracy.

[Solicitation, Page 16]

3.2.3 The captioning must be done by humans and have at least 95% accuracy.

[Solicitation, Page 17]

Section 11-35-4210(1)(b) grants any actual bidder, offeror, or contractor the right to protest the award of a contract with one exception:

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.

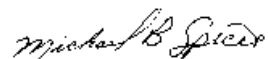
(emphasis added)

The intent of the solicitation to “meet accessibility requirements” and the 95% accuracy rate were published in the solicitation and concerns about any inconsistency between the two could have been raised as a protest of the solicitation but cannot be raised as a protest of the award.

DECISION

For the reasons stated above, the protest of Automatic Synch Technologies, Inc. is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



June 12, 2017

Chief Procurement Officer
Materials Management Office
SC DEPARTMENT OF EDUCATION
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Solicitation 5400013380, Closed Captioning Services

We wish to protest the award made in the recent solicitation for closed captioning services (solicitation 5400013380). To better analyze the decision made, we requested a copy of the winning proposal but were told that there was no proposal provided by the winning bidder (although the solicitation states a narrative is required on p.19, so not providing one would seem to be non-responsive to the solicitation). That makes it difficult to assess exactly what product the winning vendor is providing or how well it meets various criteria outlined in the solicitation. However, it is our understanding that the service bid by the winning vendor is the "Premium" captioning service from Cielo24 and resold by Kaltura (see p.1 of attached product description). This service offers an accuracy rate of 95% to 96%.

While we note that the solicitation requirements are almost an exact match to the Cielo24/Kaltura "Premium" captioning service, we also note that the stated intent of the solicitation is to "meet accessibility requirements" (p.5 of solicitation). A 95% accuracy rate is extremely poor, and falls far below an acceptable standard to provide effective and equal communication for users of captioning, as required by the ADA. Choosing such a low quality captioning service not only does a disservice to your students, but could potentially leave the state exposed to liability for non-compliance with accessibility laws. Recent decisions from the Office of Civil Rights have clearly indicated that low quality captioning does not fulfill accessibility requirements.

We respectfully ask that you reconsider the quality level of the captioning service you select and ensure your choice can meet the bar of providing equal and effective communication for your deaf and hard of hearing students.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Erler", is written over a light blue horizontal line.

Kevin Erler
Automatic Sync Technologies

Simplify your captioning workflow.
Achieve your accessibility goals.

877-AST-SYNC (877-278-7962)
info@automaticsync.com
www.automaticsync.com

cielo24 Pricing

cielo24 provides indexes, transcripts and captions all for one low price. There are no set-up fees or commitments.

- ✓ Fast, high quality, low cost captions within 24 hours: cielo24 utilizes a hybrid platform consisting of automation, and public and private paid crowds to quickly deliver high quality, low cost native language captions.
- ✓ Captions, transcripts and indexes for one low price: cielo24 turn's unstructured media into structured searchable data so that clients can generate captions, timed transcripts or indexes on demand.
- ✓ Flexible service quality and levels: cielo24 delivers three levels of quality; machine generated (70 to 80%), high quality premium (95 to 96%), professional quality (98%+). Based on requirements, clients can choose the right mix of quality and turnaround time including service guarantees.
- ✓ Integration with Popular Video Platforms: cielo24 integrates seamlessly with popular video platforms including Kaltura, YouTube, Brightcove and many more, to automate the caption and subtitle processing end to end.
- ✓ Hearing Impaired: captions meet ADA requirements to provide universal access for the hearing impaired and second language viewers with enhanced content discovery.

Standard Pricing

Product (English)	Accuracy	Per Minute	Turnaround
Machine	70-80%	\$0.25	Minutes
Premium	95-96%	\$1.00	24 Hours
Professional	98%+	\$1.50	48 Hours
Pro Foreign	98%+	\$2.50	48 Hours

*Amara editing and Expedite serviced available for additional fees

**Languages include: English, Mandarin, Chinese, Hindi, French, German, Portuguese, Japanese, Arabic and Korean. Contact us for foreign language pricing and options Kaltura@cielo24.com.

More pricing and service information is available at kaltura@cielo24.com

cielo24 Educational Pricing

Online video improves access to premier educational content. A key challenge for high volume media producers, especially educators, is how to meet Universal Access and content search requirements.

cielo24 and Amara, a leading volunteer crowd-based subtitle platform, have partnered to launch One Click to Caption (1C2C). 1C2C eliminates common barriers to captioning to meet the needs of our educational clients. 1C2C provides fast, high quality, low cost native language captions with Amara's award-winning caption editor for final editing as an integrated service.

With 1C2C there are no set-up fees or commitments. 1C2C integrates with all popular video platforms. Coursera, Stanford, and the University of California system have been utilizing 1C2C over the past year to caption more than ten thousand online videos. And now 1C2C can handle videos in more than 10 languages!

Educational 1C2C Solution Pricing

Product (English)	Accuracy	Per Minute	Turnaround
Pro 48 English	98%+	\$1.50	48 Hours
Pro 24 English	98%+	\$2.00	24 Hours
Pro 48 Foreign	98%+	\$3.00	48 Hours
Amara Editor	N/A	\$0.50	Minutes

* Expedite serviced available for additional fees.

**Languages include: English, Mandarin, Chinese, Hindi, French, German, Portuguese, Japanese, Arabic and Korean. Contact us for foreign language pricing and options Kaltura@cielo24.com.

*** Amara editor included in pricing shown.

More pricing and service information is available at kaltura@cielo24.com

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.

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**

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.