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Protest Decision

Matter of: Diverse Computing, Inc.

Case No.: 2018-202

Posting Date: November 29, 2017

Contracting Entity: South Carolina State Law Enforcement Division

Solicitation No.: 5400012447

Description: NCIC Web Database Replacement

DIGEST

Protest alleging that the successful offeror was non responsive to a mandatory requirement is denied. Diverse Computing's (DCI) letter of protest is included by reference. (Attachment 1)

AUTHORITY

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

BACKGROUND

Key Events

Solicitation Issued
Amendment 1 Issued

02/06/2017
02/17/2017

Amendment 2 Issued	03/08/2017
Amendment 3 Issued	03/08/2017
Amendment 4 Issued	03/22/2017
Intent to Award Posted	09/28/2017
Protest Received	10/07/2017

The State Fiscal Accountability Authority (SFAA) issued this solicitation on behalf of the South Carolina State Law Enforcement Division (SLED) to replace the current NCIC/Nlets Client Access System with a browser based access system for National Crime Information Center (NCIC), the International Justice and Public Safety Network (Nlets) and the SC Law Enforcement Criminal Justice Network. Proposals were received from DCI, Unisys Corporation (Unisys) and Datamaxx Applied Technologies, Inc. (Datamaxx). Proposals were evaluated in accordance with a two part evaluation process established in the solicitation. Part I of the evaluation included three evaluation criteria along with assigned weights:

Technical Methodology (60 points)
Qualifications and Experience (20 Points)
Business Cost Proposal (20 Points)¹

Six evaluators ranked each proposal against the technical and qualifications criteria. After evaluation of the technical and qualification criteria, DCI had the highest score of 67.83, Unisys

¹ The solicitation explained how the business proposal would be scored as follows:

CALCULATING POINTS FOR BUSINESS PROPOSAL (SPECIFIED)

Determination of a maximum of 20 Points: The points are assigned by the overall total price of the project; with 20 points being the maximum amount applied for the lowest priced responsive offeror.

1. Total Price will be calculated by multiplying the Base Price by the maximum number of devices in each tier.
2. The Cumulative Total consists of the overall total of adding Column A, Column B and Column C; with all discounts applied will determine the lowest priced offeror to earn the maximum amount of points.
3. Vendor Pricing Structure requires a full disclosure of the detailed pricing structure and breakdown of services of pricing offered. Include quantification of discount elements.
 - This scenario will be followed for all options and scenarios of the solicitation.
 - Values entered into template are not actual costs and are used as examples only.
 - Bidder is responsible for calculations and entering the correct totals.
 - (LC) = License Costs

was second at 61.17, and Datamaxx was last at 55. The procurement manager calculated the points for the business proposal. Datamaxx's had the lowest proposed cost of \$539,509 and received all 20 points in accordance with a well-established formula. DCI's proposed cost was \$3,126,821 and received 3.45 points. Unisys had the second lowest cost of \$2,953,506 and received 3.65 points. When the points for the business proposal were combined with the evaluator's scores of the other two criteria, Datamaxx was the highest ranked offeror with 75 points, DCI was second with 71.28 and Unisys was third with 64.82 points.

As set forth in the solicitation all three offerors were qualified to participate in Part II of the evaluation, the demonstration. DCI received the highest score for the demonstration receiving 13 out of 15 points. Datamaxx received 11.33 points and Unisys received 9.67 points. When Part I and Part II scores were combined, Datamaxx had the highest score of 86.33, DCI was second at 84.28 and Unisys was third at 74.49. An Intent to Award was posted to Datamaxx on September 28, 2017. DCI protested the award on October 7, 2017.

ANALYSIS

DCI protests that the solicitation included a mandatory requirement the offerors conduct a "live" demonstration by connecting to live servers using actual data and not using recorded videos or other facsimiles of functionality and, based on evaluator comments, Datamaxx did not meet this mandatory requirement that it perform a "live" demonstration. The only reference to the demonstration in the solicitation or amendments to the solicitation is found in the evaluation criteria for Part II:

Part II. Live Demonstration (Cumulative)

Live Presentation- 15 Points

LIVE DEMONSTRATIONS

Offerors scoring within the top five (5) of all submitted proposals in the competitive range will be invited to execute a Live Demonstration of their proposal solution. It is the intent to require Offerors to demonstrate the functionality of their solutions by executing the requirements of the solicitation.

The objective of the demonstration(s) is to provide a more in depth understanding of the proposed solution's ability to address the RFP business and technical requirements.

[Solicitation, Page 29] There is no mention in the solicitation that the live demonstration required connection to a live server with live data.

DCI points to email exchanges with the procurement manager to support its belief that the solicitation required connection to a live server in conducting the "live" demonstration. DCI points first to an email from the procurement manager notifying DCI that it had qualified to participate in Part II of the evaluation. This email included a Vendor Demonstration Script which detailed the functionality the evaluators expected to see during the "live" demonstration.

(Attachment 2) DCI points specifically to several notes at the end of the Demonstration Script:

TOTAL TIME FOR ENTIRE LIVE DEMONSTRATION: 150 MINUTES
(2.5hrs) MAXIMUM

IMPORTANT NOTES:

- *Inclusive of company overview, system overview, presentation and questions*
- *Please bring **all required equipment for live demonstrations to ensure operability**; SLED does have a projection screen.*
- ** REMINDER: Access to SLED's guest wireless network will be provided.*
- *Please bring all **KEY** personnel required to execute demonstration and answer questions.*

[Email from Donald to DCI, June 27, 2017]

DCI points to a June 30, 2017, email in which DCI sought additional clarification concerning the demonstration to support its belief that connection to a live server with live data:

DCI understands this will be a completely Live presentation, vendors should be performing off live servers and not using recorded videos or other facsimiles of functionality. Please confirm. Please identify the connectivity and supporting IT equipment for this demonstration.

Answer: Confirmed. SLED agrees to provide guest wireless internet access or the vendor can bring a backup cellular connection in case of difficulty connecting to SLED guest wireless. The vendor will need wireless and/or cellular capabilities.

However, DCI's letter of protest omits a second question and answer

3. Will the "SLED supplied test search criteria" (bullets #6, #7, and #8 in the demo script) be provided to the presenters the day-of the demonstration or will that information be given ahead of the on-site presentation?

Answer: Since the vendor be connecting to SLED switch they will need their own test system with test subjects to query against.

(Attachment 3) This response indicates that connection to a live server with live data was not a requirement for the demonstration. Datamaxx also sought clarification of the demonstration parameters and on July 6, 2017, received the following response from the procurement manager:

Good afternoon,

Response to Questions: *The vendor will not be connecting to the SLED switch. There will not be a connection to LEMS. SLED does not have a test connection. Therefore, the vendor will need their own test system with test subjects to query against. Test servers in a different state may be used.*

Questions:

The demo script states "Please bring all required equipment for live demonstrations" and lists several test transactions to be performed using SLED supplied test search criteria.

1. Will SLED be providing a test connection to LEMS for us to connect onsite? *No*
2. Will LEMS test ORI(s) and authentication credentials be provided? *No*
3. Will there be an opportunity prior to the demonstration for us to test connectivity from our equipment to LEMS? *No, there is only approximately 10 minutes prior to demonstration start time to access the room.*

(Attachment 4) There was no requirement in the solicitation or amendments that the demonstration be conducted on live servers in a live environment. A live demonstration can mean a demonstration conducted by a person in front of an audience, not an on-line demonstration, webinar, or other non-personal demonstration. The State was consistent in its response that it expected the Offeror to provide their own test system and test subjects to query against.

DECISION

For the reasons stated above, the protest of Diverse Computing, Inc. is denied.

Protest Decision, page 6

Case No. 2018-202

November 29, 2017

For the Information Technology Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer

Chief Procurement Officer

Attachment 1



October 7, 2017

Chief Procurement Officer
Information Technology Management Office
1201 Main Street
Suite 601
Columbia, SC 29201

Dear Sir or Madam:

This letter serves as formal notice of protest with regard to South Carolina solicitation 5400012447, NCIC Web Database Replacement – SLED and the state's intent to award to Datamaxx Applied Technologies, Inc. (Datamaxx).

Diverse Computing, Inc. (DCI) is an actual bidder on this solicitation and is claiming to be aggrieved based on information gained through a Freedom of Information Act (FOIA) request of documents related to the evaluation of this solicitation. These documents were requested through the FOIA process on September 28, 2017, and received via email on October 6, 2017.

DCI claims the awardee, Datamaxx, did not fulfill the requirements of the Request for Proposal for the solicitation referenced above, when they did not perform a live demonstration. A review of comments made by evaluators as reflected in the document entitled "NCIC Demonstration Score Sheets" identifies that Datamaxx did not meet the requirements of a live demonstration. The following comments were documented and associated with the Datamaxx presentation:

- "not connected to actual data";
- "not accurate information";
- "Simulated environment not connected to a test switch – server database."

The requirement for a live demonstration was clearly stated in the Request for Proposal as defined in Part II. Live Demonstration (Cumulative). The requirement was further clarified and confirmed by SLED in two email communications as follows:

- On June 27, 2017, an email was received from Procurement Officer, Ms. Tameeka Donald providing DCI notice of the company's selection to conduct a "Live Demonstration and Presentation of RFP# 5400012447- NCIC Web Database Replacement". Attached to that email was the Vendor Demonstration Script which identified the following:
 - o *TOTAL TIME FOR ENTIRE LIVE DEMONSTRATION: 150 MINUTES (2.5hrs) MAXIMUM*
IMPORTANT NOTES:
- inclusive of company overview, system overview, presentation and questions

- Please bring **all required equipment for live demonstrations to ensure operability**; SLED does have a projection screen.

** REMINDER: Access to SLED's guest wireless network will be provided.

- Please bring all KEY personnel required to execute demonstration and answer questions.

- On June 30, 2017, further clarification was received from Procurement Officer, Ms. Tameeka Donald in response to a formal question submitted by DCI as follows:
 - o DCI understands this will be a completely Live presentation, vendors should be performing off live servers and not using recorded videos or other facsimiles of functionality. Please confirm. Please identify the connectivity and supporting IT equipment for this demonstration. Answer: Confirmed. SLED agrees to provide guest wireless internet access or the vendor can bring a backup cellular connection in case of difficulty connecting to SLED guest wireless. The vendor will need wireless and/or cellular capabilities.

DCI took the requirement of the Live Demonstration phase of the procurement seriously. The DCI team followed instructions, and performed an actual live demonstration of the eAgent 2.0 software solution. Our team connected to a live environment where eAgent 2.0 is operating. DCI understood the live demonstration requirement to be a pass/fail criterion as identified in the RFP and clarified by the procurement officer. DCI further understood the outcome of this requirement enabled the SLED evaluation team to evaluate and determine whether claims made about capabilities and functionality were real, in design, or vaporware.

DCI's protest is based on the assertion that the eAgent 2.0 solution was held to a higher standard than other vendor solutions presented in the live demonstration. Comments made by evaluators support our claim and demonstrate that Datamaxx did not meet the mandatory requirements of the Live Demonstration phase of the procurement. DCI believes this invalidates the live demonstration portion of Datamaxx's proposal, and calls into question their selection.

DCI greatly appreciates your review of relevant documentation related to this protest. We look forward to working with you to provide additional information as necessary. I will be available to discuss this at your convenience.

Respectfully,



Daniel Percy
President

Attachment 2

VENDOR DEMONSTRATION SCRIPT Solicitation: #5400012447

South Carolina Law Enforcement Division (SLED) Vendor Demonstration Script: NCIC Web Database Replacement

Detailed Agenda:

1. Introduction of SLED
2. Company Overview (10 minutes)
3. Vendor/System Overview - Please demonstrate the following (90 minutes):

Instructions: Please demonstrate the technical solution of your RFP response that will be used to satisfy the NCIC Web Database replacement requirement.

A. Describe similar implementations of the solution.

The purpose of this item is to describe any similar implementations you have had with this solution in both size and complexity. Please emphasize any challenges and lessons learned.

B. System Navigation Overview & Functionality

The purpose of this item is to provide the panel with a basic understanding of your vendor solution and how a user would navigate through your system. Please provide an overview of the functionality of all of the technical requirements listed in the proposal. In addition, please specifically demonstrate the functionality of the following:

- Log into the system as different levels of users on multiple operating systems
- Notate the device ID assigned
- Demonstrate screens/accounts based on: Full Function, Inquiry Only, and Mobile
- Log out of the system
- Review log to verify the above actions are properly logged with user ID connected to device ID
- Perform criminal history inquiry using SLED supplied test search criteria
- Perform NLETS transaction (DQ/KQ) using SLED supplied test search criteria
- Perform other query transaction using SLED supplied test search criteria
- Demonstrate receiving an unsolicited message
- Demonstrate receiving a hit message and respond
- Demonstrate the pop-up option for incoming messages
- Demonstrate the visual and audible alerts for incoming messages
- Demonstrate an "across the ORI" alert (an alert that is generated when one ORI gets an alert based on entered information from another ORI)
- Demonstrate receiving one message that translates/forwards into auto generating another message
- Demonstrate the built in shortcut for the VIN and license tag
- Demonstrate the built in shortcut for driver's license and date of birth
- Perform search log to verify the input/output and all required items are included in the log for the SLED supplied criteria

- Verify each of the search results contain all of the information required for logging per SLED requirements (example - device id that performed the search, input data, output data, proper highlighting, free form ability, and time/date stamps).
- Set up a new user-id – verify this is saved in the system and can be accessed for deletion or modification
- Set up a new ORI – verify this is saved in the system and can be accessed for deletion or modification
- Set up a new device – connect this device to the just created ORI – verify this is saved in the system and can be accessed for deletion or modification
- Set up a new device - connect this device to an already existing ORI – verify this is saved in the system and can be accessed for deletion or modification
- Demonstrate how a user can be logged in simultaneously under different ORIs (example: Dispatch Center) or demonstrate how users send messages for different ORIs under one account.
- Demonstrate 508 compliance of the solution
- Demonstrate the day time/night time screens for the product
- Demonstrate the drop down Help menu
- Demonstrate the search tools
- Demonstrate the clear button
- Demonstrate the automatic time-out function
- Demonstrate product functionality if internet access is broken or is intermittent

4. Questions & Answers (50 minutes)

5. Adjournment

TOTAL TIME FOR ENTIRE LIVE DEMONSTRATION: 150 MINUTES MAXIMUM

IMPORTANT NOTES:

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- Please bring all KEY personnel required to execute demonstration and answer questions

Attachment 3

From: Donald, Tameeka
To: "[Andrew Rawlings](#)"
Cc: [Dan Percy](#); [Craig Gibbens](#)
Subject: RE: Live Demonstrations for Solicitation #5400012447- NCIC Web Database Replacement
Date: Friday, June 30, 2017 12:48:00 PM
Attachments: [image001.png](#)

Good afternoon,

Enclosed are the responses to the following questions:

1. DCI understands this will be a completely Live presentation, vendors should be performing off live servers and not using recorded videos or other facsimiles of functionality. Please confirm. Please identify the connectivity and supporting IT equipment for this demonstration. **Answer:** Confirmed. SLED agrees to provide guest wireless internet access or the vendor can bring a backup cellular connection in case of difficulty connecting to SLED guest wireless. The vendor will need wireless and/or cellular capabilities.
2. DCI is aware there are other vendors providing demonstrations, will SLED identify all vendors? **Answer:** This requirement is in the evaluation stage. The SC State Procurement Code prohibits the release of this information.
3. Will the "SLED supplied test search criteria" (bullets #6, #7, and #8 in the demo script) be provided to the presenters the day-of the demonstration or will that information be given ahead of the on-site presentation? **Answer:** Since the vendor be connecting to SLED switch they will need their own test system with test subjects to query against.

Thank You,

Tameeka Donald



Tameeka Donald | Procurement Manager
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896-0284 | tdonald@mms.sc.gov

Act 121 of 2014 (SC Restructuring Act of 2014) abolished the Budget and Control Board. Effective July 1, 2015, I have been transferred to the SC State Fiscal Accountability Authority. Please update your contact information.

Attachment 4

From: Donald, Tameeka
To: ["Paula Wilkins"](#)
Cc: [Stephani Miller](#)
Subject: RE: Live Demonstrations for NCIC Web Database Replacement Solicitation# 5400012447- UPDATED
Date: Thursday, July 06, 2017 2:06:00 PM
Attachments: [image001.jpg](#)

Good afternoon,

Response to Questions: *The vendor will not be connecting to the SLED switch. There will not be a connection to LEMS. SLED does not have a test connection. Therefore, the vendor will need their own test system with test subjects to query against. Test servers in a different state may be used.*

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Thank You,

Tameeka Donald



Tameeka Donald | Procurement Manager
Division of Procurement Services | SC State Fiscal Accountability Authority
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896-0284 | tdonald@mmo.sc.gov

Act 121 of 2014 (SC Restructuring Act of 2014) abolished the Budget and Control Board. Effective July 1, 2015, I have been transferred to the SC State Fiscal Accountability Authority. Please update your contact information.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 367, 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.