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Protest Decision

Matter of: Excipio Consulting, LLC

Case No.: 2020-204

Posting Date: October 30, 2019

Contracting Entity: University of South Carolina

Solicitation No.: USC-RFP-3491-CH

Description: Assess Data Centers and Distribution Sites

DIGEST

Protest alleging irregularities in the procurement process is denied. Excipio Consulting's protest is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer¹ (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file 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

Solicitation Issued	June 10, 2019
Amendment 1 Issued	June 24, 2019
Intent to Award Posted	September 27, 2019
Protest Received	October 3, 2019

The University of South Carolina issued this Request for Proposals on June 10, 2019 to retain a contractor to review its current data centers and distribution sites. The contractor will provide consulting services that will assist the University with their requirements and decision process prior to designing and building a new data center or remediating an existing data center(s). The assessment will provide a documented evaluation of the current environment(s) and the requirements for future growth primarily driven by research needs. The University currently has two (2) data centers – a primary data center (514 Main Street, Columbia SC 29208) and a secondary data center (1600 Hampton Street, Columbia SC 29208); and five (5) distribution sites on the University’s Columbia Campus. Originally, Offerors were to submit proposals on June 24, 2019. However, on June 24, 2019, the University issued an amendment to the solicitation clarifying that the Hampton Street facility would not be included in the assessment and extended the deadline for submission of proposals to July 1, 2019. USC posted an Intent to Award to International Business Machines on September 27, 2019. Excipio protested the award on October 3, 2019.

ANALYSIS

Excipio protests:

The Amendment to extend the response date was posted after² the original due date. Excipio checked for Amendments the day before, June 23rd and the morning of June 24th for any last-minute changes. We are concerned that our response was rejected due to the fact that Amendment #1 was not signed and included.³

² Excipio’s protest letter is ambiguous, because in one part it states that “Amendment #1 of the RFP was posted sometime *on* the original due date,” while another part states that the “Amendment to extend the response date was posted *after* the original due date.” [Attachment 1] (emphasis added).

³ Excipio’s concern is unfounded. The University’s procurement officer determined that Excipio’s failure to acknowledge receipt of Amendment 1 was a minor informality and waived the deficiency.

While a last-minute amendment is not ideal, a solicitation may be amended at any time prior to the bid opening date and time. Regulation 19-445.2050 allows bid postponements so long as an appropriate amendment is issued. Further, the solicitation stated that it may be amended at any time prior to opening.

In its letter of protest Excipio states:

Amendment #1 of the RFP was posted sometime on the original due date, June 24th, extending the submission date to July 1, 2019 after Excipio had submitted their response.

Excipio offers no evidence that the amendment was posted after the original bid opening time. However, the Cumulative Evaluation Committee Score sheet indicates that Excipio's proposal was accepted and evaluated. (Attachment 2) Further, if Excipio wished to challenge the Amendment as improper, it failed to protest the Amendment within 15 days of its issuance as required by Section 11-35-4210(1)(a). This issue of protest is denied.

Excipio's second issue of protest states:

The Scope of Work was revised in Amendment #1, which would have changed our response and proposed pricing. Based on the change in scope our pricing would have come in under the Estimated Potential Value of Contract of \$115,000.00 as listed in the Award Notification. This fact can be confirmed from our response as we itemized our pricing based on the different data centers to be assessed.

Amendment 1 was issued to clarify an ambiguity in the solicitation as follows:

THE FOLLOWING QUESTIONS WERE RECEIVED FROM VENDOR A:

1. Will 1600 Hampton Street be part of the assessment? In section B, Scope of Work, it is mentioned. However in Section C. Mandatory Requirements, it is not listed.

ANSWER: No, 1600 Hampton Street will not be included in the Assessment as we are decommissioning.

The following excerpt from Excipio's business proposal clearly reflects this change:

Deliverable #	Description	Billing Increment*	Qty	Unit Price	Investment
1	Data Center Facilities Assessment (primary data center)	Per Data Center	1	\$32,400	\$32,400
2	Data Center Facilities Assessment (distribution site)	Per Data Center	5	\$19,466	\$97,330
	Total Service Fees (per Section C.A and C.B)				\$129,730
	***Optional** 1600 Hampton Street data center (not listed in Section C.A as being in scope)	Per Data Center	1	\$32,400	

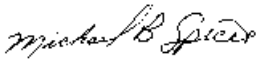
Notes:

Excipio's evaluated price was \$129,730 which excluded the Hampton Street data center. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of Excipio Consulting, LLC is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Frank Gump](#)
To: [Protest-MMO](#)
Subject: [External] USC-RFP-3491-CH - Protest of Award from Excipio Consulting LLC
Date: Thursday, October 3, 2019 11:24:43 AM
Attachments: [image001.png](#)
[image002.png](#)

Good Morning:

Please let this email serve as our notice of protest of the Intent to Award for USC-RFP-3491-CH on September 27, 2019.

After reviewing the Intent to Award notification sent to us, there are several factors that led us to file our protest.

- The due date for responses was June 24, 2019, at 3:00 pm as stated in USC-RFP-3491-CH. Excipio prepared their response to the RFP and delivered it to the address listed on the morning of June 24, 2019 per the instructions.
- Amendment #1 of the RFP was posted sometime on the original due date, June 24th, extending the submission date to July 1, 2019 after Excipio had submitted their response. There was a requirement that Amendment #1 be signed and included in the response as an acknowledgment of receipt. Needless to say we were not able to complete that piece as we had already submitted our response.
- After seeing the Amendment and the acknowledgment requirement Excipio emailed Caleisha Hayes to see if we needed to sign and submit Amendment #1. To date we have not received a response from Ms. Hayes.
- The other area of concern for us with Amendment #1 was the change to the Scope of Work to be quoted. A Data Center location was removed from the scope, which would have affected our response and pricing. Due to the fact that we had already submitted our response by the original due date of June 24th we were not able to make the adjustments to our response.

Points of Protest:

- The Amendment to extend the response date was posted after the original due date. Excipio checked for Amendments the day before, June 23rd and the morning of June 24th for any last-minute changes. We are concerned that our response was rejected due to the fact that Amendment #1 was not signed and included.
- The Scope of Work was revised in Amendment #1, which would have changed our response and proposed pricing. Based on the change in scope our pricing would have come in under the Estimated Potential Value of Contract of \$115,000.00 as listed in the Award Notification. This fact can be confirmed from our response as we itemized our pricing based on the different data centers to be assessed.

Excipio respectfully requests that the Award of USC-RFP-3491-CH be set aside and allow Excipio to submit a revised response based on the change in the Scope of Work.

Please let us know if we can provide any additional materials in support of our protest. We look forward to your response and thank you for taking the time to consider our points of protest.

Respectfully,

Frank Gump



FRANK GUMP
[Excipio Consulting LLC](#)

Work: (918) 361-6052
Email: FGump@excipio.net
Web: www.excipio.net

Confidentiality Notice: This communication, and any files attached, contains confidential information that may be privileged. The information is intended only for the use of the individual(s) or entity to which it is addressed. If you are not the intended recipient, any disclosure, distribution or the taking of any action in reliance upon this communication is prohibited and may be unlawful. If you have received this communication in error, please notify the sender and destroy the original information.

Attachment 2

9/12/2019

**CUMULATIVE EVALUATION COMMITTEE SCORING
SOLICITATION NO. USC-RFP-3491-CH
ASSESS DATA CENTERS & DISTRIBUTION SITES**

OFFEROR

Excipio Consulting

	Isaiah	Logan	Todd
A. Technical Proposal	36.00	39.60	40.50
B. References, Experience & Qualifications	13.50	27.00	28.50
C. Business Proposal	22.16	22.16	22.16
TOTALS	71.66	88.76	91.16
Grand Total =	251.58		

OFFEROR

IBM

	Isaiah	Logan	Todd
A. Technical Proposal	27.00	38.25	38.25
B. References, Experience & Qualifications	24.00	25.50	24.00
C. Business Proposal	25.00	25.00	25.00
TOTALS	76.00	88.75	87.25
Grand Total =	252.00		

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2019)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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.