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## Protest Decision

**Matter of:** TargetX.com, LLC

**Case No.:** 2020-208

**Posting Date:** December 6, 2019

**Contracting Entity:** Trident Technical College

**Solicitation No.:** 101819-208-77002-11/18/19

**Description:** Recruiting SaaS

### DIGEST

Protest of a restrictive solicitation is denied. The protest letter of TargetX.com, LLC is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (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.

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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

Solicitation Issued	10/18/2019
Amendment 1 Issued	10/30/2019
Protest received	11/13/2019

Trident Technical College issued this Request for Proposals on October 18, 2019 to acquire recruiting software as a service or customer relationship management as a service. The solicitation stated that award would be made to a single prime contractor:

AWARD TO ONE OFFEROR (JAN 2006): Award will be made to one Offeror.  
[06-6040-1]

[Solicitation, Page 28]

During the question and answer period TargetX proposed the solicitation be modified as follows:

### AWARD CRITERIA -- PROPOSALS (MODIFIED)

Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. \*At the State's discretion, before award is made, the State may consider entering into a separate contract as a Brand Name or Sole Source Contract. The end result would be two separate contracts. \*

### AWARD TO ONE OFFEROR (MODIFIED)

Award will be made to one Offeror. \*At the State's discretion, before award is made, the State may consider entering into a separate contract as a Brand Name or Sole Source Contract. The end result would be two separate contracts. \*

TCC rejected this request in Question 33 of Amendment 1:

State's Response: No change. Award will be based upon the AWARD CRITERIA – PROPOSALS (JAN 2006) and AWARD TO ONE OFFER (JAN 2006) clauses as specified in the solicitation Section VI. Award Criteria.

[Amendment 1. Question 33]

## ANALYSIS

TargetX filed a protest with the CPO on November 13, 2019, alleging:

In the College's response via Addendum 1, the college is limiting competition by denying a reasonable request to modify the Solicitation's award criteria despite it being an established practice by a similar State institution seeking a similar offering.

TargetX argues:

In the world of higher education recruiting SaaS products (also known as CRM systems), there are several industry-leading solutions where two separate legal entities combine to present a unified solution employed by institutions to address this need. Our solution is built and hosted on the Salesforce platform, and while we are the number one recruitment solution on the Salesforce platform, Salesforce does not legally permit higher education partners such as us to resell their licenses under our own contracts. Thus, any institutions using our solution are required to contract with both us and Salesforce separately and in parallel....

This is language that has been used by other state institutions within the past year and allows for full and open competition [See R. 19-445.2140] [02-2A095-2]. There are several providers, including those working with other State of South Carolina institutions, where the solution is dependent on two separate contracts from two separate vendors.

The solicitation is requesting a single contractor to provide customer relation management functionality as a service, Software as a Service (SaaS). Typically, the software manufacturer either provides Internet access to its software running on its own computers or subcontracts with company to host the software and make it available through the Internet. Award is made to a single contractor who assumes complete responsibility for the software functionality and the service delivery. TargetX is requesting that it be allowed to propose the software functionality only and the State conduct a separate parallel procurement for the service delivery, then combine its proposal along with the separately solicited service delivery proposal for evaluation and award of both the current solicitation and the service delivery contract. TTC denied this request, and TargetX protests that the current requirement limits competition.

TargetX does not allege that the requirements as written are unduly restrictive or that TTC will not receive multiple competitive proposals in response to the solicitation as written. Under the

solicitation as written, TTC will award one contract and will look to one contractor for performance of the contract. Even if the arrangement proposed by TargetX were a legally viable option under the Procurement Code, TTC would have two contracts to award and administer. If there is a performance problem, it will up to TTC to determine the defaulting party and resolve any finger pointing between the contractors. TargetX's proposed change will result in an additional administrative burden on the agency. The Procurement Review Panel has observed:

To summarize, a specification can be restrictive so long as it is not "unduly" so - in other words, it must be written in such a manner as to balance the reasonable, objective needs of the State against the goal of obtaining maximum practicable competition.

In analyzing whether a specification meets the requirement that it not be unduly restrictive, the Panel will not substitute its judgment for the judgment of the using and procuring agencies so long as the choice of specification is not unreasonable, arbitrary, capricious or contrary to the Procurement Code.

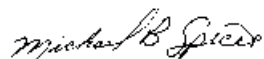
In Re: *Protest of Cambex Corporation*, Case No. 1992-7

The requirement that the award be made to a single offeror is not unduly restrictive.

## **DECISION**

For the reasons stated above, the protest of TargetX.com, LLC is denied.

For the Information Technology Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1



November 13, 2019

TargetX  
1001 East Hector Street Suite 110  
Conshohocken, PA 19428

Subject: Protest to Amendment 1 of Solicitation 101819-208-77002-11/18/19 for "Recruiting SaaS"

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To: Chief Procurement Officer, Information Technology Management Office (protest-itmo@itmo.sc.gov)

Pursuant to section 11-35-4210 of the South Carolina State Code, we respectfully issue the following protest regarding Amendment 1 of Solicitation 101819-208-77002-11/18/19 from Trident Technical College for "Recruiting SaaS."

*1. Set forth the specific nature of the controversy*

Trident Technical College released Solicitation 101819-208-77002-11/18/19 on October 18th, 2019. On Page 28 under Section VI Award Criteria, the Solicitation states "AWARD TO ONE OFFEROR (JAN 2006): Award will be made to one Offeror. [06-6040-1]". Further, Page 12 under "QUESTIONS FROM OFFERORS" states "The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer -- as soon as possible -- regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition."

In the world of higher education recruiting SaaS products (also known as CRM systems), there are several industry-leading solutions where two separate legal entities combine to present a unified solution employed by institutions to address this need. Our solution is built and hosted on the Salesforce platform, and while we are the number one recruitment solution on the Salesforce platform, Salesforce does not legally permit higher education partners such as us to resell their licenses under our own contracts. Thus, any institutions using our solution are required to contract with both us and Salesforce separately and in parallel.

The Salesforce platform is used by over 3,000 colleges and universities, and our solutions are used by nearly 400 institutions. This also includes several public institutions in South Carolina, including the College of Charleston and Central Carolina Technical College.

In review of the Solicitation, our company submitted a question/request via email to Trident Technical College on October 28th at 7:30am ET requesting the following:

Within the Award Criteria section of the Solicitation, it specifies that awards will only be made to one offeror, and therefore, we respectfully request the following amendment to the Solicitation:

**AWARD CRITERIA -- PROPOSALS (MODIFIED)**

Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State. \*At the State's discretion, before award is made, the State may consider entering into a separate contract as a Brand Name or Sole Source Contract. The end result would be two separate contracts. \*

**AWARD TO ONE OFFEROR (MODIFIED)**

Award will be made to one Offeror. \*At the State's discretion, before award is made, the State may consider entering into a separate contract as a Brand Name or Sole Source Contract. The end result would be two separate contracts. \*

This is language that has been used by other state institutions within the past year and allows for full and open competition [See R. 19-445.2140] [02-2A095-2]. There are several providers, including those working with other State of South Carolina institutions, where the solution is dependent on two separate contracts from two separate vendors.

Within our message, we also noted that this exact solicitation modification was provided by the State just 14 months ago in Solicitation 5400015818 for CRM SYSTEM FOR CCTC (Central Carolina Technical College). The solicitation for CCTC was also similar in overall/functional requirements as the TTC's solicitation.

Following the deadline for question submissions, the College posted Amendment 1 (the document in question of our protest) on October 30th. Within the amendment, TTC provided the following responses to this issue identified as Question 33:

State's Response: No change. Award will be based upon the AWARD CRITERIA – PROPOSALS (JAN 2006) and AWARD TO ONE OFFER (JAN 2006) clauses as specified in the solicitation Section VI. Award Criteria.

In the College's response via Addendum 1, the college is limiting competition by denying a reasonable request to modify the Solicitation's award criteria despite it being an established practice by a similar State institution seeking a similar offering.

*2. Set forth the specific relief requested*

We are respectfully requesting the following courses of relief through an additional amendment:

- Update the Solicitation with the previously requested modified terms for the AWARD CRITERIA -- PROPOSALS (MODIFIED) and AWARD TO ONE OFFEROR (MODIFIED) sections.
- Provide an extension to the submission deadline for three weeks following the result of this protest (or any legally defined timings).

*3. Provide sufficient details for the State Engineer and any other interested party to have notice of every issue the protestor wants the State Engineer to decide.*

All relevant information has been included within this protest. As previously mentioned, we welcome the State to consult Solicitation 5400015818 for CRM SYSTEM FOR CCTC (Central Carolina Technical College) where a reasonable precedence has been established for our request to allow for the Award Criteria modifications.

Sincerely,

Cheryl Patterson  
[rfp@targetx.com](mailto:rfp@targetx.com)

CC: Jeff O'Dell ([Jeff.odell@tridenttech.edu](mailto:Jeff.odell@tridenttech.edu))

## 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.

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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>

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**

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

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

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1. What is your/your company's monthly income? \_\_\_\_\_

2. What are your/your company's monthly expenses? \_\_\_\_\_

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**