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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: Insurance Advantage, LLC

Case No.: 2021-118

Posting Date: November 9, 2020

Contracting Entity: University of South Carolina

Solicitation No.: USC-RFP-3651-CH

Description: Provide Employee Voluntary Benefits Program

DIGEST

Protest that apparent successful bidder is not responsible is denied. The protest letter of Insurance Advantage, LLC (IA) 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:	07/29/2020
Amendment 1 Issued	08/13/2020
Amendment 2 Issued	08/14/2020
Amendment 3 Issued	08/20/2020
Amendment 4 Issued	08/25/2020
Intent to Award Posted	10/05/2020
Protest Received	10/14/2020

The University of South Carolina (USC) issued this Request for Proposals (RFP) July 29, 2020, to retain a contractor to provide an employee voluntary benefits program. USC posted an Intent to Award to HUB International Midwest Limited (HUB) on October 10, 2020. IA filed a protest of the award on October 14, 2020. IA did not submit a response to this solicitation but was listed in the proposal submitted by The Patterson Group as a “bidding partner.” Section 11-35-4210(1)(b) grants the right to protest to subcontractors:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code.

(emphasis added) IA’s protest is received as a protest by a subcontractor.

ANALYSIS

IA raises four issues in its letter of protest. The first issue states that HUB was involved in a lawsuit that was not disclosed in its proposal:

Per section 11-35-4230 in the South Carolina Consolidate Procurement Code, I am writing to protest the awarding of the Voluntary Benefits program to “HUB International Midwest Limited” aka HUB International aka HUB Southeast aka HUB Carolinas aka KeenanSuggs, on the following grounds:

- 1) Several of these entities are named defendants in civil case C/A No. 3:19-cv-1243-CMC (D.S.C. Nov. 4, 2019); DHW Purchasing Grp. v. Hub Int'l Midwest Ltd that we assume was not disclosed by HUB International Midwest Limited to University of SC Procurement or the Benefits Committee on this last RFP response (see Exhibit 1)

This case was dismissed on November 4, 2019, prior to issuance of this solicitation.

There is no requirement in the solicitation requiring disclosure of past, resolved litigations. This issue of protest is denied.

IA's second issue of protest points out that HUB is involved in an ongoing litigation and questions whether HUB disclosed this information in its proposal:

- 2) Several of these entities are *still named* defendants in a prolonged potential civil and criminal trial that the 4th U.S. Circuit Court of Appeals said "must be held on the issue of whether a dispute between Hub International Ltd. and a South Carolina school district over a **"massive" multiyear kickback scheme is subject to arbitration"**.

"The basis of the litigation in *Berkeley County School District v. Hub International Ltd. et al.* is a **"massive insurance contract steering and kickback fraud conspiracy that spanned the period from 2001 to 2016 and was perpetrated"** by Hub International, Knauff Insurance Agency Inc., which Hub acquired in 2012, and the district's former chief financial officer, Brantley Thomas, according to Wednesday's (December 5, 2019) ruling by the 4th U.S. Circuit Court of Appeals in Richmond, Virginia." (see Exhibit 2)

USC responds:

2. Insurance Advantage points to another lawsuit, Berkeley County School District v. Hub International Ltd. et al., in which HUB is a defendant. All parties were aware of the existence of this lawsuit prior to the issuance of USC-RFP-3651-CH. Insurance Advantage identified the lawsuit in its prior protest and the CPO addressed it in his decision in Matter of Patterson Insurance Group. Inc./Insurance Advantage. LLC. Case No. 2019-126. Nevertheless, HUB disclosed the lawsuit to USC in its proposal in response to USC-RFP-3651-CH.

A procurement officer's determination of responsibility will not be disturbed unless the determination is "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A). Procurement officers are given broad discretion in making responsibility determinations because these are a matter of business judgment. Protest of Value Options, et al., Panel Case No. 2001-7. In this case, the University's procurement officer was aware of the Berkeley County lawsuit and concluded that HUB is a responsible offeror. Therefore, the CPO should dismiss this protest issue.

The CPO is persuaded by USC's response and this issue of protest is denied.

The third issue raised in IA's letter of protest suggests that USC should award a portion of IA's proposal that was offered at \$0.00:

- 3) Denial of uniquely offered, \$0 (**free**), value-added services to University of South Carolina faculty and staff (along with spouses) and adjunct faculty members. These free services, which were uniquely offered by my firm Insurance Advantage, along with our RFP bidding partner The Patterson Group, and can be offered independently of other benefits, include:
 - a. Pre-retirement counseling & Planning
 - b. Social Security Analysis & Planning
 - c. Medicare Supplement Insurance Consultation
 - d. Individual Health Insurance Consultation for Adjunct Faculty

The solicitation included a statement that the award would be made to one offeror.

AWARD TO ONE OFFEROR (JAN 2006)

Award will be made to one Offeror. [06-6040-1]

[Solicitation, Page 22]

The Code prohibits changes to the basis upon which offers were submitted after the offers are opened and evaluated. This issue of protest is denied.

IA's last issue of protest complains that IA was not automatically notified when the solicitation was published:

- 4) A coordinated and repeated pattern of failure to notify me and my firm of:
 - a. The new RFP solicitation for Voluntary Benefits
 - b. Notifications regarding the new solicitation once we were belatedly notified of the new RFP via a third party (see Exhibits 3 – 5)

Section 11-35-1520(2) requires:

- (2) Public Notice. Adequate public notice of the request for proposals must be given in the same manner as provided in Section 11 35 1520(3).

Section 11-35-1520(3) requires:

Notice. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in 'South Carolina Business Opportunities'. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

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Case No. 2021-118


November 9, 2020

This procurement was advertised in 'South Carolina Business Opportunities from July 29, 2020 through August 6, 2020 in accordance with the Code. There is no requirement in the Code that individual potential offerors be notified of the publication of a solicitation. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of Insurance Advantage, LLC is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

10/14/2020 – 3:30 pm EST

Chief Procurement Officer
Materials Management Office
1201 Main St, Suite 600
Columbia, SC 29201

Solicitation Number: USC-RFP-3651-CH

Dear Chief Procurement Officer & Relevant Parties,

Per section 11-35-4230 in the South Carolina Consolidate Procurement Code, I am writing to protest the awarding of the Voluntary Benefits program to “HUB International Midwest Limited” aka HUB International aka HUB Southeast aka HUB Carolinas aka KeenanSuggs, on the following grounds:

- 1) Several of these entities are named defendants in civil case C/A No. 3:19-cv-1243-CMC (D.S.C. Nov. 4, 2019); DHW Purchasing Grp. v. Hub Int'l Midwest Ltd that we assume was not disclosed by HUB International Midwest Limited to University of SC Procurement or the Benefits Committee on this last RFP response (see Exhibit 1)
- 2) Several of these entities are ***still named*** defendants in a prolonged potential civil and criminal trial that the 4th U.S. Circuit Court of Appeals said “must be held on the issue of whether a dispute between Hub International Ltd. and a South Carolina school district over a “**massive” multiyear kickback scheme is subject to arbitration**”.

“The basis of the litigation in *Berkeley County School District v. Hub International Ltd. et al.* is a “**massive insurance contract steering and kickback fraud conspiracy that spanned the period from 2001 to 2016 and was perpetrated**” by Hub International, Knauff Insurance Agency Inc., which Hub **acquired** in 2012, and the district’s former chief financial officer, Brantley Thomas, according to Wednesday’s (December 5, 2019) ruling by the 4th U.S. Circuit Court of Appeals in Richmond, Virginia.” (see Exhibit 2)

- 3) Denial of uniquely offered, \$0 (**free**), value-added services to University of South Carolina faculty and staff (along with spouses) and adjunct faculty members. These free services, which were uniquely offered by my firm Insurance Advantage, along with our RFP bidding partner The Patterson Group, and can be offered independently of other benefits, include:
 - a. Pre-retirement counseling & Planning
 - b. Social Security Analysis & Planning
 - c. Medicare Supplement Insurance Consultation
 - d. Individual Health Insurance Consultation for Adjunct Faculty

- 4) A coordinated and repeated pattern of failure to notify me and my firm of:
 - a. The new RFP solicitation for Voluntary Benefits
 - b. Notifications regarding the new solicitation once we were belatedly notified of the new RFP via a third party (see Exhibits 3 – 5)

In light of these findings, we ask that the SC Procurement Office award a sole source contract to our partnership (Insurance Advantage & The Patterson Group) for the Long-Term Care Insurance + Life Insurance solution that has been provided to over 25 state departments in the last 4 (four) years. This solution, of which my firm Insurance Advantage & The Patterson Group are *still* the sole sources of, has:

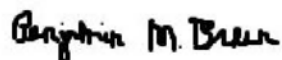
- a) Been the subject of specific product questions, USC Human Resources and Benefit Committee evaluations, and university-wide implementation discussions including sole source discussions with University of South Carolina Human Resources and Procurement staff since November 2016
- b) Helped USC Human Resources staff and Benefits Committee members identify and confirm specific gaps in their benefit offerings in 2017
- c) Provided a sole source solution for the 2 largest gaps (portable, affordable life insurance + long-term care insurance that lasts a lifetime) that USC's Human Resources team, their employee survey in 2018, and the state of South Carolina's Public Employee Benefit Administration have identified and confirmed to fill a much-needed gap
- d) Been **presented** as a solution at least seven (7) times including in two (2) formal Procurement/HR decision maker meetings in person (that were requested by USC HR). These presentations were provided to all levels of USC's Human Resources staff, Procurement staff, and Benefits committees, and have come in addition to the written form RFP responses and other material that has been provided **over the past 48 (forty-eight) months**.

We also ask that you allow us to provide the uniquely offered, \$0 (**free**), value-added services highlighted above to University of South Carolina faculty and staff (along with spouses) and adjunct faculty members, unless the University objects to the provision of these free services.

We're ready to move forward, and we look forward to serving the extraordinary, intelligent staff and faculty of the University of South Carolina with the same level of excellence that I have served the University and the State of South Carolina over the last 20 years in previous roles. We also look forward to keeping the provision of these critical services, along with the jobs that they will create, within our local community.

Thank you so much for your time and effort with these important matters.

With Warm Regards,



Benjamin M. Green
President & COO
Insurance Advantage
540 Meeting Street,
Columbia, SC 29169
ben@theIAteam.com



Office of the General Counsel

October 30, 2020

VIA EMAIL AND U.S. MAIL

Mr. Michael B. Spicer
Chief Procurement Officer
State Fiscal Accountability Authority
1201 Main Street, Ste. 600
Columbia, SC 29201

Re: Protest of Insurance Advantage, LLC
USC-RFP-3651-CH

Dear Mr. Spicer:

This is in response to the protest letter dated October 14, 2020 of Mr. Benjamin M. Green, President and COO of Insurance Advantage, LLC. The University will address the protest issues Insurance Advantage identified in its protest letter in the order Insurance Advantage presented them:

1. Insurance Advantage asserts that the awarded vendor, HUB International Midwest Limited (HUB), among other entities, was a defendant in civil lawsuit in federal district court that the court apparently dismissed last year. Insurance Advantage states its assumption that HUB did not disclose the lawsuit to USC. However, Insurance Advantage cannot cite to any language in the RFP, either in Section II(A) "CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS" or elsewhere, that requires HUB to disclose the dismissed lawsuit to USC. The RFP does not require HUB to disclose the lawsuit, and therefore the CPO should dismiss this protest issue.
2. Insurance Advantage points to another lawsuit, Berkeley County School District v. Hub International Ltd. et al., in which HUB is a defendant. All parties were aware of the existence of this lawsuit prior to the issuance of USC-RFP-3651-CH. Insurance Advantage identified the lawsuit in its prior protest and the CPO addressed it in his decision in Matter of Patterson Insurance Group, Inc./Insurance Advantage, LLC, Case No. 2019-126. Nevertheless, HUB disclosed the lawsuit to USC in its proposal in response to USC-RFP-3651-CH.

A procurement officer's determination of responsibility will not be disturbed unless the determination is "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A). Procurement officers are given broad discretion in making responsibility determinations because these are a matter of business judgment. Protest of Value Options, et al., Panel Case No. 2001-7. In this case, the University's procurement officer was aware of the Berkeley County lawsuit and concluded that HUB is a responsible offeror. Therefore, the CPO should dismiss this protest issue.

3. The University evaluated the proposal of Insurance Advantage's "bidding partner," The Patterson Insurance Group (Patterson). Patterson was not the highest ranked offeror. The University's determination with respect to selection and ranking of prospective offerors is final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law. S.C. Code Ann. § 11-35-2410(A). There is no evidence that the University's ranking was clearly erroneous, arbitrary, capricious, or contrary to law. Therefore, the CPO should dismiss this protest issue.
4. The University properly posted the solicitation and Patterson timely submitted its proposal in response to it. The University properly posted the award and Insurance Advantage submitted its protest within the protest period established in the Procurement Code. The CPO should dismiss the fourth protest issue because it fails to state a ground upon which relief can be granted.

For the reasons set forth above, the University requests the CPO to dismiss Insurance Advantage's protest.

Sincerely,



George W. Lampl, III
Associate General Counsel

cc: Ms. Stacy Gregg (via email)
Mr. Benjamin M. Green (via email)
Mr. John E. Schmidt, III (via email)

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.