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Protest Decision

Matter of: Transact Campus Inc.

Case No.: 2021-208

Posting Date: March 3, 2021

Contracting Entity: South Carolina State University

Solicitation No.: FY2105-2810-70204-02-19-2021

Description: Intent to Sole Source to TouchNet

DIGEST

Protest of intent to sole source is granted. The protest letter of Transact Campus, Inc. (TC) 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 materials in the procurement file and applicable law and precedents.

BACKGROUND

Intent to Sole Source Published	02/04/2021
Intent to Protest Received	02/10/2021
Protest Received	02/24/2021

South Carolina State University published an intent to award a five year sole source contract to Touchnet Information Systems (TIS) on February 4, 2021, for hosting and maintenance for the University owned perpetual license of Gateway Credit Card and ACH Engines, and addition of Application Subscription Program (ASP) for the Payment Client (including registrar transcript request fees and graduation, application fees payment points), Bill+Payment Account Center, eBill, eDeposits, and eRefunds software. (Attachment 2) TC filed its intent to protest the sole source award to TIS on February 10, 2021, advising:

The sole source award appears to be improper, as Transact can provide all of the services listed in the notice of intent to award.

After discussions with TC, SCSU agreed to fulfill its requirements in accordance with the Code. (Attachment 3) TC filed its detailed protest on February 24, 2021.

ANALYSIS

Section 11-35-1560 provides:

A contract may be awarded for a supply, service, information technology, or construction item without competition if, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer, determines in writing that there is only one source for the required supply, service, information technology, or construction item.

There is more than one source for the requested services. SCSU has agreed to fulfill its requirements in accordance with the Code.

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Case No. 2021-208

March 3, 2021

DECISION

For the reasons stated above, the protest of Transact Campus, Inc. is granted. The intent to award a sole source contract to Touchnet Information Systems is canceled. South Carolina State University will seek to fulfill its requirements in accordance with the Code.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

ROGERS JOSEPH O'DONNELL

415.956.2828 (t)	Robert Dollar Building
415.956.6457 (f)	311 California Street, 10th Flr.
	San Francisco CA 94104
202.777.8950 (t)	Bowen Building
202.347.8429 (f)	875 15th Street, NW, Suite 725
www.rjo.com	Washington DC 20005

February 24, 2021

Chief Procurement Officer
Information Technology Management Office
Procurement Services
1201 Main Street, Suite 600
Columbia, SC 29201
protest-itmo@itmo.sc.gov

Re: Transact Campus Inc.'s Detailed Statement of Protest of South Carolina State University's Intent to Sole Source to TouchNet, Solicitation # FY2105-2810-70204-02-19-2021

Dear Chief Procurement Officer:

This letter serves as Transact Campus Inc.'s ("Transact") detailed statement of protest regarding South Carolina State University's ("SCSU") public notice of its Intent to Sole Source to TouchNet, Solicitation # FY2105-2810-70204-02-19-2021 ("Sole Source"), posted on February 4, 2021, pursuant to S.C. Code § 11-35-4210 *et seq.* This sole source award would be improper under South Carolina law, as Transact can provide the services described in the Intent to Sole Source, and SCSU's Justification for Sole Source Procurement. As such, SCSU should cancel the sole source award and issue a competitive solicitation that would allow Transact the fair opportunity to respond and demonstrate the benefits of its solution and allow SCSU to select the best service to meet its need.

A. SCSU's Notice and Technical Requirements

SCSU posted the Sole Source on the South Carolina Division of Procurement Services, "South Carolina Business Opportunities" website on February 4, 2021. The Sole Source describes SCSU's intent to award a contract to TouchNet Information Systems for "a five year period for the hosting and maintenance for the University owned perpetual license of Gateway Credit Card and ACH Engines, and addition of Application Subscription Program (ASP) for the Payment Client (including registrar transcript request fees and graduation application fees payment points), Bill+Payment Account Center, eBill, eDeposits, and eRefunds software."

SCSU described its requirements as "continued hosting and maintenance of the perpetual license and a payment processing service that provides a variety of services to appropriately receive and record payments from student, parents and other constituencies." SCSU required that the services be provided "in a safe, Payment Card Industry – Data

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protest-itmo@itmo.sc.gov
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Security Standards manner.” While SCSU described these services with reference to TouchNet, the underlying payment services that SCSU requires are available from other contractors, including Transact.

SCSU provided Transact with its Justification for Sole Source Procurement (“Justification”) on February 11, 2021. The Justification includes two bases for a potential sole source award to TouchNet:

1. The University’s primary administrative system is Banner from Ellucian, which handles data for students, HR, Financial Aid, Records, and Finance. The TouchNet (a SunGard partner) for the TouchNet Payment Gateway is certified for interoperability with the SunGard PA-DSS solution to Banner. The service serves as a platform for the receipt of student tuition and fees. It is the only software that will work with the TouchNet Payment Gateway which SCSU owns the perpetual license and pays annually for hosting and maintenance. It is cost-prohibitive to explore any other option for these items at this time due to compatibility with the University’s embedded financial system, Banner from Ellucian.
2. Due to the University’s investment and ownership of the TouchNet Payment Gateway, University can leverage a sole source for the TouchNet suite (ASP), which consists of TouchNet Bill+Payment Client, eBill, eRefunds, eDeposits, and Student Account Center.

Transact timely submitted its notice of intent to protest on February 10, 2021. After Transact’s filed its notice of intent to protest, SCSU’s representatives reached out to Transact for more information on Transact’s service offerings. These conversations resulted in Transact submitting a proposal to SCSU on February 19, 2021. SCSU has not posted a notice of award or provided further updates to Transact as of the date of this detailed statement of protest. As such, Transact submits this detailed statement of protest to elaborate on the grounds stated in its intent to protest and ensure Transact’s proposal to SCSU receives the proper consideration.

B. A Sole Source Award Would Be Improper, as Transact Can Supply SCSU with Services that Will Meet All of its Technical Requirements

South Carolina requires competition in public contracting to “maximize to the fullest extent practicable the purchasing value of funds,” “foster effective broad-based

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competition,” “ensure the fair and equitable treatment of all persons who deal with the procurement system,” and “provide safeguards for the maintenance of a procurement system of quality and integrity[.]” SC Code § 11-35-20. South Carolina prohibits sole source awards unless the agency’s procurement officer determines that “there is only one source for the required supply, service, [or] information technology[.]” SC Code § 11-35-1560. The most recent available version of SCSU’s Procurement Policies and Procedures states that “In cases of reasonable doubt, competition must be solicited.” (emphasis in original).

South Carolina’s requirement for sole source contracts is clear. While Section 19-445.2105 of the Rules and Regulations, 1976 South Carolina Code of Laws, provides examples of “circumstances which could necessitate sole source procurement,” it does not state that these circumstances will always necessitate sole source procurement, and requires the agency procurement officer to provide a sufficient justification for any sole source award. SCSU pointed to two of those examples in its Justification as relevant to the potential sole source award to TouchNet: (1) where the compatibility of equipment, accessories, or replacement parts is the paramount consideration, and (3) where the item is one of a kind. While SCSU pointed to cost as a justification for the potential sole source award, South Carolina law does not recognize cost as a justification for avoiding the state’s requirement for competitive solicitation.

SCSU’s Justification fails to demonstrate either that a sole source award would be permissible under Section 11-35-1560, or that either example provided in Section 19-445.2105 could support a sole source award to TouchNet. SCSU’s Justification does not demonstrate that SCSU performed market research or engaged with contractors other than TouchNet to determine if those contractors could provide the required payment services, including integration with SCSU’s Banner system, and whether any other contractor could provide those services in a manner that would be cost-competitive with the potential sole source award to TouchNet.

In fact, as Transact has demonstrated to SCSU in its proposal attached hereto, Transact is capable of providing SCSU with all of the payment services required, including integration with SCSU’s Banner system. SCSU’s prior use of TouchNet is not a sufficient justification for a sole source award. Neither are the supposed cost benefits of staying with TouchNet. SCSU did not attempt to quantify or even explain why another system would be “cost-prohibitive” – particularly to the degree that a competitive procurement could not be entertained. Considerations regarding system transitions and total costs are regularly dealt with via competitive solicitations, as required under South Carolina Law. As the SFAA

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noted in its Protest Decision in Case No. 2020-201, “All contracts must eventually end” and while considerations regarding system migration and the related costs are valid subjects for consideration in a competitive procurement, “without market analysis and a good faith estimate of the cost and level of effort there is no basis for a determination to limit competition to a single source.”

SCSU’s Justification thus fails all three identified bases for the potential sole source award. TouchNet is not the “only source” for SCSU’s required services, as is required under Section 11-35-1560. And with regards to the examples given in Section 19-445.2105, Transact has demonstrated that TouchNet’s system is not “one of a kind,” and that Transact can provide SCSU’s requirements for “compatibility” with its Banner system.

C. Transact’s Request for Relief

As SCSU’s Justification fails to meet South Carolina standards for a sole source procurement, the notice of intent to award should be canceled. SCSU should proceed to a competitive procurement, allowing Transact to compete fairly against TouchNet and any other potential offerors.

Sincerely,

Joshua M. Deitz

Attachment 2

2/11/2021

SCBO - Procurement Services

South Carolina Business Opportunities

Published by Division of Procurement Services - Delbert H. Singleton, Jr., Division Director

Ad Category: Intent To Sole Source

Ad Start Date: February 4, 2021

Title: Intent to Sole Source to TouchNet

Purchasing Agent/Entity: SC State University

Bid/Submittal Due Date: February 19, 2021 - 5:00pm

Description:

In accordance with the Sole Source section 11-35-1560 listed in the South Carolina Consolidated Procurement, South Carolina State University (SCSU) is providing public notice of the intent to procure (TouchNet Information Systems) as a sole source procurement for a five year period for the hosting and maintenance for the University owned perpetual license of Gateway Credit Card and ACH Engines, and addition of Application Subscription Program (ASP) for the Payment Client (including registrar transcript request fees and graduation application fees payment points), Bill+Payment Account Center, eBill, eDeposits, and eRefunds software.

SC State University requires continued hosting and maintenance of the perpetual license and a payment processing service that provides a variety of services to appropriately receive and record payments from student, parents and other constituencies. These payment services must be done in a safe, Payment Card Industry – Data Security Standards manner. Multiple areas rely on the accuracy and security of the payment processing system.

Pursuant to Section 11-35-1560(A) of the S.C. Code of Laws, the following notice is hereby provided:

Any actual or prospective bidder, offeror, contractor, or sub-contractor who is aggrieved in connection with this intended award may be entitled to protest, but only as provided in Section 11-35-4210 of the S.C. Code of Laws. To protest an award, you must (i) submit notice of your intent to protest with five (5) business days of the date the notice is posted, and (ii) submit your actual protest with fifteen (15) days of the date the award notice is posted. Days are calculated as provided in Section 11-35-310(13) of the S.C. Code of Laws. Both protests and notices of intent to protest must be in writing and must be received by the appropriate Chief Procurement Officer within the time provided. The grounds of the protest and the relief requested must be set forth with enough particularity to give notice of the issues to be decided.

Any protest must be addressed to the Chief Procurement Officer, Information Technology Management Office, and submitted in writing:

(a) by email to: protest-itmo@itmo.sc.gov or (b) by post or delivery to: 1201 Main Street, Suite 600, Columbia, SC 29201

Solicitation #: FY2105-2810-70204-02-19-2021

Direct Inquiries To: Jessica Favor

Buyer Phone#:

Buyer Email: jfavor@scsu.edu

Full Details / Download: Send an email to buyer with Solicitation # in subject line

South Carolina Business Opportunities • Scott Hawkins11111, Editor • 1201 Main Street, Suite 600 • Columbia, SC 29201
803-737-0686 • scbo@mmo.sc.gov • <https://procurement.sc.gov>



Attachment 3

From: [Favor, Jessica](#)
To: [Spicer, Michael](#)
Subject: Re: [External] Transact Campus Inc.'s Notice of Intent to Protest Sole Source Award, Solicitation No. FY2105-2810-70204-02-19-2021
Date: Wednesday, February 24, 2021 12:30:55 PM

Hi Michael,

We reached out to TransAct and requested a quote. Having a hard time finding a third company. I will forward the email with the quote and information that TransAct sent.

Do I have to post something in SCBO, since we will not do a five year sole source, but we may have to do a one year due to TransAct reply.

Let me know.

Thanks,

Jessica Favor, NIGP-CPP, CPPO, CPPB
Office of Procurement Services
SC State University
(803)536-8743 office
(803)533-3621

From: Spicer, Michael <mspicer@mmo.sc.gov>
Sent: Tuesday, February 23, 2021 9:23 AM
To: Favor, Jessica <jfavor@scsu.edu>
Subject: FW: [External] Transact Campus Inc.'s Notice of Intent to Protest Sole Source Award, Solicitation No. FY2105-2810-70204-02-19-2021

Jessica,
Did SCSU take any action in relation to this intent to protest?

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised May 2020)

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 2020 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.