

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Crider, Bouye, Elliott & Goodwin, LLC.

Budget & Control Board
RFP # 5400007446

Building Valuation Services for the
Insurance Reserve Fund

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2014-130

POSTING DATE: July 18, 2014

MAILING DATE: July 18, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed June 16, 2014 by Crider, Bouye, Elliott & Goodwin, LLC. (Crider Bouye) under authority of South Carolina Code Section 11-35-4210. With this request for proposals (RFP), the Budget and Control Board (BCB) attempts to procure building valuation services for the Insurance Reserve Fund (IRF). After evaluating the proposals received, on June 6, 2014, BCB posted its intent to award to AssetWorks, LLC (AssetWorks). Crider-Bouye protested the BCB's intent to award alleging: (1) the procuring agency's failure to follow the stated scoring criteria, (2) its failure to adhere to the weightings assigned to the criteria, (3) its failure to consider all information provided by or sought to be provided by Crider Bouye, and (4) arbitrary and capricious scoring of the proposals. Crider Bouye supplemented its protest letter with a second letter dated June 23, 2014. The second letter was provided to elaborate on the issues of protest, it not add separate grounds to the protest.

In order to resolve the matter, the CPO conducted a hearing July 8, 2014. Appearing before the CPO were Crider Bouye, represented by Todd Carroll, Esquire; AssetWorks,

represented by David Summer and Faye Flowers, Esquires; and the BCB, represented by Frank Potts, Esquire.

NATURE OF PROTEST

The letters of protest are attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On March 7, 2014, the BCB published the RFP. [Ex. 1]
2. On March 19, 2014, the BCB conducted at pre-proposal conference.
3. On March 31, 2014, the BCB issued Amendment #1 [Ex. 2] responding to questions raised by the prospective offerors.
4. On April 15, 2014, the BCB opened proposals received from:
 - American Appraisal Associates
 - Clontz Newkirk
 - AssetWorks
 - Crider-Bouye
 - CBIZ Valuation Group LLC
 - Colliers International
 - Marshall & Stevens, Inc.
 - HCA Asset Management[Ex. 4]
5. On June 6, 2014, following evaluation of the proposals, the BCB posted its Intent to Award to AssetWorks. [Ex. 3]
6. On June 16, 2014, the CPO received the initial protest letter from Crider Bouye.

DISCUSSION

On March 7, 2014, the State issued the RFP for building valuation services for the IRF.

The original solicitation called for prospective offerors to be evaluated and scored on the following criteria, which were assigned the following weightings:

Technical Requirements	25 points
Electronic Availability of Data and IT interface	25 points
Conduct Onsite Appraisals	25 Points

Organizational Capabilities	10 Points
Staff Qualifications	10 Points
Price	5 Points

The RFP also contained the following provision related to amendment of the solicitation:

Amendments to Solicitation (Jan 2004)

(a) The solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments... (b) Offerors shall acknowledge receipt of any amendment to this solicitation by (1) signing and returning the Amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

In accordance with this provision in the RFP, the State amended the solicitation in this case to add Amendment No. 1, issued on March 31, 2014. Amendment No. 1, among other things, modified the Award Criteria section of the RFP to add the following:

After the initial scoring, the State will conduct presentations/ demonstrations with the proposers or where a natural break occurs in the scoring of all proposals. Any operator that submits a proposal should “tentatively” block the demonstration dates listed below pending notification from the State. Date and time (approximately 60 minutes for each demonstration) will be “assigned” by the State.

The amendment went on to state that “The Demonstration/Presentation will be allotted 15 points to be added to the scores for the above evaluation criteria in order to determine the highest ranked offeror.”

Thus, on March 31, 2014, prior to the opening of proposals, Crider Bouye was aware (a) that, after initial scoring had been done, presentations would be used to further evaluate the offerors, (b) that some but not all offerors would be asked to make a presentation if a “natural

break” in scoring occurred, and (c) that the weighting assigned to the scoring was 15 points in addition to the points already set forth in the RFP.

Crider Bouye acknowledged receipt of Amendment No. 1 in its offer submitted to the State on April 15, 2014. Crider Bouye was eventually declared not responsive, a determination which Protestant does not challenge in its protest. Because of its non-responsiveness, Crider Bouye’s proposal was not evaluated, and Protestant was not asked to make a presentation.

The evaluation of responsive offers was conducted by three evaluators: Dr. Greg Niehaus, Professor of Finance and Insurance, the University of South Carolina; Jim Doty, Assistant Director of Underwriting, IRF; and Dale DeLong, Senior Business Analyst, IRF. The evaluators’ composite scores were:

<u>Offeror</u>	<u>Total Score</u>
1. AssetWorks	271.78
2. HCA Asset Management	264.77
3. American Appraisal	263.57
4. CBIZ	164.49
5. Marshall & Stevens	155.33
6. Clontz-Newkirk	129.77
[Ex. 6]	

On June 6, 2014, AssetWorks was declared to be the responsive offeror whose proposal is the most advantageous to the State, price and other factors included. On June 16, 2014, Crider Bouye filed its letter of protest challenging the award to AssetWorks.

Alleging the evaluation was so legally deficient it cannot stand; Crider-Bouye protested the evaluation of the responsive proposals and requested a re-solicitation as its relief.

CONCLUSIONS OF LAW

Regarding award of a request for proposals, the Consolidated Procurement Code (the Code) reads,

Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned

previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals. If price is an initial evaluation factor, award must be made in accordance with Section 11-35-1530(9) below. [11-35-1530(7) Selection and Ranking.] [Emphasis added]

The Code defines a responsive bidder or offeror as “a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.” [11-35-1410(7)]

Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals. [11-35-1530(9) Award.]

Crider-Bouye alleged in its June 16 letter the BCB violated these provisions of the Code in its evaluation of proposals generally as stated above and specifically:

Amendment 1 to the RFP stated that the procuring agency would conduct presentations with the proposers and that each presentation “will be allotted 15 points” that could be added to the proposer’s “initial” score. In addition to a potential boost of 15 points, the RFP contained nothing to prevent evaluators from also adjusting their “initial” scores downward based on the presentations. Further, the solicitation indicated that the presentation may serve as a gateway to a Pilot project, in which proposers would be given “test cases” to demonstrate their capabilities to the procuring agency. Performance on the Pilot Program could have added up to 25 additional points to the proposer’s score.

Despite the importance of the presentation, Crider Bouye was not permitted an opportunity to make a presentation to the evaluators . . . Crider Bouye was impermissibly prevented from participating in and completing the proposal process.

Crider Bouye was not invited to present because the BCB rejected Crider Bouye’s proposal as nonresponsive. Crider Bouye did not protest the BCB’s rejection of its bid or make any argument whatsoever regarding that determination. As a non-responsive offeror, Crider

Bouye could not be evaluated. Therefore, the State had no duty to offer Crider Bouye an opportunity for a demonstration. Demos were only allowed “after the initial scoring”, which clearly indicates that demos would not be conducted with un-scored offerors. Therefore, under the Code, it could not have been ranked for award.

Crider Bouye alleged in its June 16 letter, “The evaluators impermissibly used the presentation to alter the relative weight of the evaluation factors” by adding fifteen points for presentations.

On March 31, 2014, the BCB advised offerors, with Amendment #1, that it was altering the evaluation factors to read, in pertinent part, as follows:

After the initial scoring, The State will conduct presentations/demonstrations with the proposers or where a natural break occurs in the scoring of all proposals. Any operator that submits a proposal should “tentatively” block the demonstration dates listed below pending notification from the State. Date and time (approximately 60 minutes for each demonstration) will be “assigned” by the State.

- The Demonstration/Presentation will be allotted 15 points to be added to the scores for the above evaluation criteria in order to determine highest ranked offeror.

If the IRF elects to conduct the Pilot Project after the Proposals are scored, the Pilot Project will be allotted 25 points. These points will be added to the scores for the above evaluation criteria in order to determine highest ranked offeror.

[Ex. 2, Part VI. Award Criteria, Evaluation Factors – Proposals, p. 1]

Amendment #1 altered the original award criteria, not the evaluators. It announced to all prospective bidders that the State was adding an additional 15 points for presentations/demonstrations to the initial award criteria. Crider Bouye could have filed a protest of Amendment #1, but it did not.

The Code provides prospective bidders the opportunity to protest a solicitation reading, “A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with

the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue.” [11-35-4210(1) (a) Right to Protest; Exclusive Remedy] Therefore, Crider Bouye’s protest was untimely filed.

Crider Bouye alleged other specific additional improprieties in the evaluation process citing the Procurement Review Panel’s instructions in *In Re Protest of systems & Methods, Inc.* including:

- Unless the procuring agency withheld the “cost” criteria from the evaluators until after the presentations were completed, the manner of evaluating the proposals was improper.
- Presentations must be done “before introduction of the cost factor” if price is an evaluation criterion
- The method for scoring presentations must be set forth “in detail” so the evaluators do not use the presentation as a way to “dilute” the weights assigned by the RFP to each evaluation criteria
- “In no case should a vendor’s performance (e.g., organization, speaking ability, persuasiveness, creative use of props) at an oral presentation be graded or scored and the oral presentation itself should never be given weight as a criteri[on]”

Crider Bouye’s allegations rely almost exclusively on the Procurement Review Panel’s decision *In Re: Protest of Systems & Methods, Inc.*, Case No. 1989-8. This matter is distinguishable from *System & Methods* in several significant ways.

In *Systems & Methods*, a presentation was not announced to the prospective offerors during the solicitation process. The evaluators “decided” to add an oral presentation only after the evaluators realized “the closeness of the total scores.” [p. 3, Item 8] In doing so, the evaluation committee actually did alter the evaluation process, which altered the outcome. In this case, the BCB announce with Amendment #1, well before the offerors submitted proposals, that it was adding an additional evaluation criteria for presentations/demonstrations. Amendment #1 prescribed in detail how the evaluation would be conducted, including presentations/demonstrations. Amendment #1 was not protested by any prospective offeror.

Similar to the facts of *Systems & Methods*, the presentations/demonstrations were scored after the initial evaluation, which included evaluation of price. However, in *Systems & Methods*, during oral presentations, evaluators were allowed to “ask questions and change scores.” [p. 4, Item 10] In this case, according to Kimber Craig, BCB Procurement Managers and all three evaluators, no initial scores were altered following the presentations/demonstrations. Rather, the evaluators scored the presentations/demonstrations separately, as announced by Amendment #1. In *Systems & Methods*, the evaluation of the oral presentations actually altered the relative order of the proposals. In this case, the presentations/demonstrations did not change the highest ranked offeror. Throughout the evaluation, AssetWorks’ proposal was ranked highest. Based on the technical scores alone, the evaluators ranked AssetWorks’ proposal highest. After Ms. Craig scored the price proposals mathematically and added the scores for price to the technical evaluation, AssetWorks continued ranked highest. Following presentations/demonstrations, AssetWorks was still ranked highest considering all scores of the technical proposals, the price proposals, and the presentations/demonstrations.

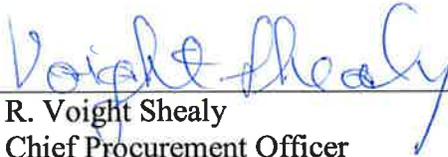
In this case, the CPO finds no actual violation of the Code or Panel precedence that altered the outcome.

DETERMINATION

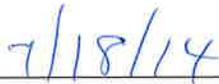
Pursuant to Section 11-35-2410(A) of the Code, a determination by the State as to which proposal is the most advantageous, after taking into consideration price and the other evaluation criteria, is final and conclusive unless such determination is “clearly erroneous, arbitrary, capricious, or contrary to law.” On several occasions, the Panel has held that it [the Panel] will not re-evaluate proposals and will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as they follow the requirements of the Code and the RFP, fairly consider all proposals and are not actually biased. *See, e.g., Protest of Santee Wateree Regional Transportation Authority*, Panel Case No. 2000-5 (reaffirming that the evaluation process need not be perfect as long as it’s fair and the Panel will not re-evaluate proposals); *Protest of Transportation Management Services, Inc.*, Panel Case No. 2000-3 (finding that the evaluation process is not required to be perfect and that the Panel will not re-evaluate proposals); *Protest of First Sun EAP Alliance*, Panel Case No. 1994-11 (noting that the Panel will not disturb the evaluators’ findings so long as they following the Code and the RFP’s requirements, fairly consider all proposals and are not actually biased); *Protest of Volume Services*, Panel Case No. 1994-8 (holding that the Panel will not substitute its judgment for that of the evaluators). In the *Santee Wateree* case, *ante*, the Panel also explained that subjectivity is the hallmark of the RFP process and does not equate with arbitrariness. Moreover, the Panel has found that “the variation of evaluators’ scores alone is only proof of the subjective nature of the evaluation aspect of the RFP process.” *Protest of Travelsigns*, Panel Case No. 1995-8. Regardless, the protestant bears the burden of proof to demonstrate by a preponderance of the evidence that the evaluators’ determinations were flawed. *Id.*

The CPO finds no evidence the evaluators were arbitrary, capricious, clearly erroneous, or contrary to law in their scoring of the responsive offers.

For the reasons stated above, the protest is denied.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

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 108.1 of the 2013 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
1105 Pendleton Street, Suite 202, 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.



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June 23, 2014

Via Hand Delivery and Email

Voight Shealy
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
protest-mmo@mmo.sc.gov

Re: Amended Protest of Intent to Award Solicitation 5400007446 (Building Valuation Services)

Dear Mr. Shealy:

On behalf of Crider, Bouye, Elliott & Goodwin, LLC, we respectfully submit this letter to supplement Crider Bouye's June 16, 2014 protest of the above-referenced intent to award. In addition to the grounds stated in its initial letter, Crider Bouye protests as follows:

The Consolidated Procurement Code requires that an RFP "must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor." S.C. Code Ann. § 11-35-1530(5). Likewise, the Code requires that submissions "must be evaluated using only the criteria stated in the request for proposals and there must be adherence to the weightings that have been assigned previously." *Id.* § 11-35-1530(7). Any award must be based on "the evaluation factors set forth in the request for proposals." *Id.* § 11-35-1530(9).

In *In Re Protest of Systems & Methods, Inc.*, S.C. Procurement Review Panel Case No. 1989-8, the Panel established guidelines for using oral presentations when evaluating proposals. First, it explained that presentations must be done "before introduction of the cost factor" if price is an evaluation criterion. Second, it held that the method for scoring presentations must be set forth "in detail" so that evaluators do not use the presentation as a way to "dilute" the weights assigned by the RFP to each evaluation criteria. Finally, the Panel concluded: "In no case should a vendor's performance (e.g., organization, speaking ability, persuasiveness, creative use of props) at an oral presentation be graded or scored and the oral presentation itself should never be given weight as a criteri[on]."

Here, the evaluation of the presentations by various offerors violated these guidelines and the respective provisions in the Consolidated Procurement Code to which they relate. For this solicitation, the evaluation criteria outlined in the RFP were as follows:

1. Technical Requirements	25 Points
2. Electronic Availability of Data and IT Interface	25 Points
3. Conduct Onsite Appraisals	25 Points
4. Organizational Capabilities	10 Points
5. Staff Qualifications	10 Points
6. Price	5 Points

(RFP at 21.) In response to questions received from prospective offerors, the procuring agency amended the scoring process to add a presentation. Amendment 1 explained how the presentation was supposed to blend into the evaluation process: “The Demonstration/Presentation will be allotted 15 points to be added to the scores for the above evaluation criteria in order to determine the highest ranked offeror.” (Amendment 1 at 2.)

However, rather than distributing the 15 “presentation points” proportionally among the six evaluation criteria—which would have allowed them to maintain their respective weightings assigned by the RFP—the presentation itself was identified to the evaluators as a standalone “evaluation criteri[on]” for them to score. Additionally, presentations were not conducted until after the price component of each offeror’s bid had been added to its score.

This method of evaluating proposals caused several legal defects in the award process, including:

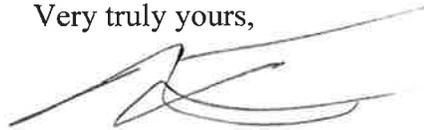
- Each presentation was scored as an independent, standalone criterion, which violates the *Systems & Methods* Panel’s specific prohibition against presentations themselves being “given weight as a criteri[on].”
- Having the presentations scored after inclusion of the price component violates the *Systems & Methods* Panel’s directive that if a presentation is part of an RFP, it must come “before introduction of the cost factor.” Likewise, because the presentation scores were factored in after the pricing component, the relative weight of the pricing component was reduced from 5% of the overall pre-presentation score (5 points out of 100) to 4.3% of the overall post-presentation score (5 points out of 115). The *Systems & Methods* Panel held that such dilution of the pricing criterion which “plainly violates §§ 11-35-1530(5) and (7)” of the Consolidated Procurement Code.
- By having evaluators score presentations as an independent evaluation criterion, the evaluation process deviated from the evaluation criteria and weightings assigned to each criterion by the RFP. The evaluators were not instructed to divide up the 15 “presentation points” proportionally based on the weights assigned to various criteria in the RFP but, instead, were left to award 15 points as a lump-sum based on each evaluator’s own impression of the presentations. This necessarily caused the evaluation process to stray from the weightings assigned to the evaluation criteria in the RFP, led to arbitrary and capricious scoring, and caused the award to be issued in violation of South Carolina Code § 11-35-1530(9).

Crider Bouye respectfully submits that these defects, both individually and collectively, should cause the agency to resolicit the requirement. *See In Re Protest of Accessibility Consulting, LLC*, S.C. Chief Procurement Officer Case No. 2012-104 (ordering the College of Charleston to resolicit proposals because its scoring method deviated from the weight assigned each criterion established in the RFP).¹

Thank you again for your consideration of this protest. Please let us know if we can provide you with any additional materials or information.

With kind regards, I remain

Very truly yours,



M. Todd Carroll

cc: Kimber Craig, Procurement Officer (via email only to kcraig@io.sc.gov)
David B. Summer, Jr., Counsel for AssetWorks, LLC (via email only to davidsummer@parkerpoe.com)

¹ After filing its protest letter, Crider Bouye learned that its own proposal had been deemed nonresponsive. This finding, however, is irrelevant here, as the requested remedy of resolicitation is sufficient to establish standing to protest an award. *See, e.g., In Re Protest of S. Atl. Mech. Co.*, S.C. Chief Procurement Officer Case No. 2014-003 (“Moreover, the Procurement Review Panel (Panel) has held that a nonresponsive bidder has standing to protest because of its interest in the possibility of a re-bid of the project.”); *In Re Protest of Orangeburg-Calhoun-Allendale-Bamberg Cmty. Action Agency, Inc.*, S.C. Procurement Review Panel Case No. 1992-15 (“This interest in resolicitation confers standing on the Protestants in this case whether or not they are nonresponsive.”); *In Re Protest of Pizzagalli Constr. Co.*, S.C. Procurement Review Panel Case Nos. 1991-8 & 1991-9 (“Primesouth was not stripped of protestant status at the moment the CPO declared it nonresponsive.”).

June 16, 2014

Via Email and Hand Delivery

Voight Shealy
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
protest-mmo@mmo.sc.gov

Protest of Intent to Award Solicitation 5400007446 (Building Valuation Services)

Dear Mr. Shealy:

On behalf of Crider, Bouye, Elliott & Goodwin, LLC, we respectfully submit this letter to protest the intent to award Solicitation 540007446, which was a request for proposals to provide building valuation services to the Insurance Reserve Fund. Crider Bouye is the incumbent provider on this contract, has provided exemplary service to the State for the previous five years, and submitted a proposal approximately \$1 million less than that of AssetWorks, the putative awardee. In fact, Crider Bouye displaced AssetWorks as the provider of these same services five years ago due to AssetWorks' apparently substandard performance.

This protest is based on the procuring agency's failure to follow the stated scoring criteria, its failure to adhere to the weightings assigned to the criteria in the solicitation, its failure to consider all information provided by or sought to be provided by Crider Bouye, and arbitrary and capricious scoring of the proposals. These protest grounds are discussed below. Crider Bouye reserves the right to amend its protest, including to state additional grounds for its protest, as provided by law. The Intent to Award was posted on June 6, 2014, making this protest timely filed.

Grounds for Protest: Amendment 1 to the RFP stated that the procuring agency would conduct presentations with the proposers and that each presentation "will be allotted 15 points" that could be added to the proposer's "initial" score. In addition to a potential boost of 15 points, the RFP contained nothing to prevent evaluators from also adjusting their "initial" scores downward based on presentations. Further, the solicitation indicated that the presentations may serve as a gateway to a Pilot Project, in which proposers would be given "test cases" to demonstrate their capabilities to the procuring agency. Performance on the Pilot Program could have added up to 25 additional points to a proposer's score.

Despite the importance of the presentation, Crider Bouye was not permitted an opportunity to make a presentation to the evaluators. Crider Bouye contacted the procuring

agency several times during the solicitation process to schedule its presentation, but it never received an opportunity to present to the evaluators. Accordingly, despite being the low-cost offeror who has already provided the exact services sought by the State for five years, Crider Bouye was impermissibly prevented from participating in and completing the proposal process.

In addition to Crider Bouye being improperly frozen out of the proposal process, it appears likely that at least two additional fundamentals of procurement were violated. First, upon information and belief, the evaluators impermissibly used the presentation to alter the relative weight of the evaluation factors in a way that varied from the weights assigned by the RFP itself. Such conduct violates South Carolina Code §§ 11-35-1530(5), (7), and (9), as presentations cannot be used to alter the relative weights of the evaluation criteria or serve as a “tie-breaker.” *In Re Protest of Systems & Methods, Inc.*, S.C. Procurement Review Panel Case No. 1989-8.

Second, unless the procuring agency withheld the “cost” criteria from the evaluators until after the presentations were completed, the manner of evaluating the proposals violated the Procurement Review Panel’s instructions in *In Re Protest of Systems & Methods, Inc.* In that case, the Panel held that if presentations occur, they must take place “before introduction of the cost factor.” It does not appear that the procuring agency followed those instructions in this case and improperly diluted the importance of the various factors, including cost, when evaluating the proposals.

Because of these errors, as well as others that may be identified, Crider Bouye submits that the procuring agency should resolicit this contract.

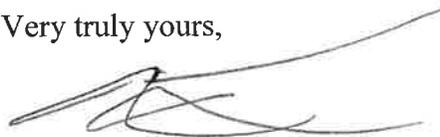
Request for Materials: Pursuant to the South Carolina Freedom of Information Act and Regulation 19.445.2010, Crider Bouye respectfully requests that the State provide copies of all documents associated with this solicitation, including all materials submitted by offerors, including AssetWorks, LLC’s proposal; all materials associated with the evaluation process, including scoring sheets and evaluators’ notes; copies of all presentations made by offerors; all materials associated with the Pilot Project discussed in the RFP; and all communications regarding AssetWorks or its proposal or Crider Bouye or its proposal.

Request for Hearing: Crider Bouye requests that a hearing be held on this matter.

Thank you for your consideration of this protest. By copy to Ms. Craig, we are informing her of this protest and of our request for materials.

With kind regards, I remain

Very truly yours,



M. Todd Carroll

cc: Kimber Craig, Procurement Officer (via email only to kcraig@io.sc.gov)