

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protest of:)	
)	CASE No. 2011-118
)	
MAXIMUS)	
)	
)	
Materials Management Office)	POSTING DATE: July 6, 2011
RFP No. 5400002549)	
Enrollment Broker for the Department)	MAILING DATE: July 6, 2011
<u>Of Health and Human Services</u>)	

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from MAXIMUS. With this request for proposals (RFP), the Materials Management Office (MMO) attempts to procure an enrollment broker for the Managed Care Program on behalf of the Department of Health and Human Services (DHHS). In the letter, MAXIMUS protested MMO’s intent to award to Policy Studies, Inc. (PSI) alleging that “the evaluation process in this case was so significantly flawed in its execution and implementation that it was impossible for the State to determine the responsive and responsible offeror whose proposal is the most advantageous to the State.”

In order to resolve the matter, the CPO conducted a hearing June 22, 2011. Appearing before the CPO were MAXIMUS, represented by David Summer and Faye Flowers, Esquires; PSI, represented by Elizabeth Crum, Esq.; DHHS, represented by Deirdra Singleton and Vicki Johnson, Esquires; and MMO, represented by John Stevens, State Procurement Officer.

NATURE OF PROTEST

The letter of protest and the amended letter are attached and incorporated herein by reference.¹

¹ Exhibits A and B to the protest letter have not been attached to this Decision but are incorporated by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On February 7, 2011, MMO issued the RFP. (Ex. 1)
2. On February 23, 2011, MMO conducted a pre-proposal conference.
3. On March 7, 2011, MMO issued Amendment #1. (Ex. 2)
4. On March 9, 2011, MMO issued Amendment #2. (Ex. 3)
5. On March 10, 2011, MMO issued Amendment #3. (Ex. 4)
6. On March 11, 2011, MMO issued Amendment #4. (Ex. 5)
7. On March 16, 2011, MMO issued Amendment #5. (Ex. 6)
8. On March 23, 2011, MMO opened the proposals.
9. On May 13, 2011, after evaluation of the proposals, MMO posted a notice of intent to award to PSI. The price proposals and composite scores were as follows:

<u>Offeror</u>	<u>Price Proposal</u>	<u>Composite Score</u>
PSI	\$3,786,328	442
Automated Health Services	3,962,151	412.45
MAXIMUS	4,883,151	391.9
Public Consulting Group (PCG)	10,891,872	316.45

10. On May 23, 2011, MAXIMUS delivered its protest letter to the CPO.
11. On May 27, 2011, MAXIMUS supplemented its protest letter.

LEGAL AUTHORITY

Pursuant to Section 11-35-2410(A) of the South Carolina Consolidated Procurement Code (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 South Carolina Procurement Review Panel (“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, 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., 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, 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, Case No. 1994-8 (holding that the Panel will not substitute its judgment for that of the evaluators). In Protest of Santee Wateree Regional Transportation Authority, 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 evaluator’s scores alone, is only proof of the subjective nature of the evaluation aspect of the RFP process.” Protest of Travelsigns, 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.

EVIDENCE PRESENTED AND CONCLUSIONS OF LAW

As stated above, MAXIMUS’ protest alleges that the evaluation process in this case was significantly flawed causing the evaluators’ scores to be clearly erroneous, arbitrary, capricious, or

contrary to law and thus necessitating a resolicitation. In support of its contention, MAXIMUS relies on the following arguments:

- that the different evaluators' scores "varied significantly" and were inconsistent with one another and in some instances an evaluator's scores were inconsistent with his or her own written comments;
- that the evaluators considered information and evaluation factors not set forth in the RFP when scoring the demonstrations; and
- that the evaluators ranked a non-responsive proposal.

1) MAXIMUS first argued variances or inconsistencies between evaluator scores were clear evidence that the evaluation was arbitrary. Patricia Lanifero, MAXIMUS' Vice President, Eastern Division, argued that she expected to see a "bell curve" reflecting all the evaluators had consistent scoring methods but did not. As evidence, she pointed out that Evaluator #1 had only a range of two points between its high and low scores while Evaluator #5 had a larger range of 15 points between its high and low scores. She claimed that this was proof that the evaluations were arbitrary. However, on cross-examination, she acknowledged that Evaluator #5's scores were consistently lower than the other evaluators' for all offerors and that in reality "most" of the evaluators' scores were logical.

In other examples, she attempted to connect comments written by one evaluator to the scores given by other evaluators as evidence of a flawed evaluation process. For instance, she claimed that the scoring was flawed because Evaluator #2 noted that PCG "should have focused on enrollment function" in her Demonstration scoring and gave PCG a 10 out of 15 points on its Demonstration (Ex. 14, p. 48; Ex. 15) yet Evaluators #2, #4, and #5 had scored the PCG demo the same or significantly better than they scored MAXIMUS' demonstration. (Ex. 15) She attributed the above examples to a lack of proper instruction on evaluations and/or evaluator bias. She specifically alleged that Evaluator #2 was biased. She also claimed that Evaluators #4 and #5 failed to understand MAXIMUS' proposal.

Despite this allegation and the fact that all the evaluators were available to testify,² MAXIMUS only called Evaluator #3, Steve Boucher, who is the Project Director for DHHS. Mr. Boucher had scored MAXIMUS' proposal the highest (not including the price score, which was done by the procurement manager) and was the only evaluator MAXIMUS did not challenge in its protest. He answered questions from all parties regarding his scoring methods. Mr. Boucher stated that he considered all the offerors competent to provide enrollment services to the State of South Carolina. Therefore, he explained that he began his scoring process by giving all offerors a good score and then added or subtracted from that score in order to address the quality of each offeror's proposal. For example, Mr. Boucher started his scoring of the technical proposals by assigning every offeror 40 of the 50 points available. In addition, Mr. Boucher had attended the meeting when Procurement Manager Daniel Covey of MMO had instructed the evaluators on the conduct of the evaluation, confidentiality, and conflict of interest. He testified that the evaluators scored the proposals independently, without discussion. He also indicated that he was not biased against any offeror.

During its case, PSI called Evaluator #2, Melody Griffin Martin, to testify. Ms. Martin, who does provider outreach for DHHS's Managed Care Program, had scored PSI the highest, not including the price. Ms. Martin explained that her scoring method was to start by assigning a moderately high score for each category for every offeror and then adding or subtracting from that score depending upon each offeror's strengths and weaknesses. Ms. Martin testified she also attended the evaluator briefing conducted by Mr. Covey where she received instructions regarding the conduct of the evaluation, confidentiality, and conflict of interest and where she signed her conflict of interest statement. She reaffirmed at the hearing that she considered every proposal fairly and was not biased.

² Early during the hearing, DHHS informed MAXIMUS that all five evaluators were on standby and were available to testify if requested.

Mr. Covey testified and confirmed that he used MMO's standard practices for instructing the evaluators by providing them the Briefing Instructions sheet and the certifications for Conflict of Interest and Confidentiality. (Ex. 11 and 12). Further, he noted that while Evaluator #5's scoring might have been lower than the other evaluators', it was never-the-less consistent within itself.

In support of its argument that the evaluation process was flawed, MAXIMUS extracted evaluator comments and scores, attached them to its protest letter, and argues that they are proof of its allegation. They are not. In some instances, MAXIMUS compares the comments and scores of one evaluator against the comments and scores of another evaluator and alleges variances between the different evaluators' comments and scores amounts to the scores being arbitrary or capricious. It does not. In other instances, MAXIMUS argues an evaluator's own comments are not consistent with his or her own scores. While one example may seem curious, such as Ms. Martin's written comment that PSI had "limited market experience" yet she scored PSI a maximum score of 10 points for Corporate Qualifications, no one asked Ms. Martin to explain. This comment alone is insufficient to prove the evaluation process was arbitrary and capricious. MAXIMUS failed to present four of the five evaluators to testify³ and instead asks the CPO to rule on this case based on the evaluators' comments and testimony from its own staff about how they would have scored the proposals. Both evaluators who did testify clearly indicated that their scoring was logical, fair and unbiased. To delve further into her various scores for different offerors would require that the CPO re-evaluate the proposals, which the Panel has held consistently it would not do.

The evidence before the CPO is that the evaluators determined PSI's proposal to be the most advantageous to the State by a material margin. Contributing to its win was PSI's price proposal, which was substantially less than MAXIMUS', and for which PSI received the maximum 25 points. In addition, PSI received the highest scores overall for technical approach, demonstration, and corporate

qualifications as well. (Ex. 15) Based upon the evidence presented, the CPO finds that MAXIMUS failed to prove that the varying evaluators' scores or the individual comments rendered the evaluation process arbitrary or capricious. Moreover, MAXIMUS presented no proof that the evaluators were biased.

2) MAXIMUS next alleged that the scoring was arbitrary, capricious and illogical because it was not based on the evaluation factors set forth in the RFP. Specifically, MAXIMUS alleged that the evaluators scored the demonstrations inappropriately.

By way of background, the RFP stated that the proposals would be evaluated on the following factors:

Technical Approach Offeror's detailed explanation regarding how the scope of work will be performed and specifications will be met, including staffing.	50 points
Price The total price to the State including annual maintenance and licensing fees for the first two years of contract period.	25 points
Demonstrations Demonstration of the completeness, robustness and ease of the proposed solution. The technical capabilities of the proposed solution to meet the needs of the State as defined in this RFP.	15 points
Corporate Qualifications References (corporate), experience, and evidence of ability to conduct business in the State. (Ex. 1, p. 54, Evaluation Factors – Proposals)	10 points

According to Ms. Lanifero, MAXIMUS was evaluated on the quality of its presentation for its Demonstration scores, rather than the quality of the enrollment system as specified in the RFP. She claimed that the higher scores for other offerors' Demonstrations were the result of "energy" and "cheerleading." Ms. Lanifero also called attention to an email dated April 12, 2011 from Daniel Covey

³ PSI, not MAXIMUS, called Ms. Martin. However, MAXIMUS did cross-examine this evaluator.

in which he wrote, “[t]he evaluation panel for the above referenced RFP has expressed an interest in a demonstration of the following items during offeror presentations: Member look-up functionality, Demonstration of current and historical transactions, Call center ability, Workflow capabilities of the system, and Capability to view correspondence sent to members.” (Ex. 20) (Emphasis added) She claimed that even though Mr. Covey communicated these areas of interest to the offerors the evaluators did not score the demonstrations based upon only these factors. Finally, she contended that the evaluators improperly combined the demonstration scores with another category, which was outside the RFP’s criteria. As evidence, she cited a comment by Evaluator #1’s score sheet on Corporate Qualifications that stated another offeror’s demonstration was “energetic” (Ex. 14, p. 65) and a reference on Evaluator #3’s score sheet on Corporate Qualifications which mentioned the “demo” (Ex. 14, p. 73).

Ilene Baylinson, MAXIMUS’ President, Eastern Region, also claimed that the evaluators’ notes regarding the MAXIMUS demonstration focused on MAXIMUS’ presentation style, not MAXIMUS’ system.

Mr. Covey testified that he relied upon DHHS Procurement Director, Patty Larimore, to ask the evaluators what they would like offerors to focus on in their demonstrations. He stated Ms. Larimore provided the five items that he forwarded to the offerors April 12, 2011. Mr. Covey stated that he did not tell the offerors they were limited to presenting only these five items.

The only evaluator asked to testify regarding scores for the demonstrations was Evaluator #2, Ms. Martin. She acknowledged her written comments regarding MAXIMUS’ demonstration as “poor energy level, read from scripts entire time”, but denied that her score was based on MAXIMUS’ presentation skills. Instead she explained that she scored MAXIMUS’ demonstration on its technical aspects as evidenced by her other comments such as “didn’t appear to know business model even

though has been serving as enrollment broker for SCDHHS for 4 years” and “[u]nimpresed as Maximus offered nothing innovative.” (Ex. 14, p. 28) She further explained that she gave MAXIMUS’ demonstration the score that she did because its demonstration offered nothing new other than a new look to its website and it did not offer robust search capability. She also stated that she considered the five items mentioned by Mr. Covey in his April 12, 2011 email to the offerors to be basic requirements for all offerors and therefore she did not reward those with extra points.

The only evidence presented to the CPO in this regard beyond the score sheets was testimony of Mr. Covey and one of the five evaluators.⁴ The one evaluator offered stated that she did not base her scores for Demonstrations on presentation ability. Regarding the April 12, 2011 email, Mr. Covey merely provided insight to offerors regarding the presentations; he did not alter or restate the requirements of the RFP. Finally, taking portions of comments out of context, without providing the necessary background or testimony, is insufficient in this case to meet the burden of proof. Further inquiry regarding the scoring of the demonstrations under that evaluation criterion would be impossible without the CPO substituting his judgment for the judgment of the evaluators, which would be improper. Based on the evidence presented, Maximus failed to prove that the evaluation process was fundamentally flawed due to the evaluators’ scoring of the demonstrations.

3) Finally, MAXIMUS alleged that the evaluation process in this case was flawed because the evaluators ranked the proposal by PCG, which MAXIMUS contends was non-responsive, along with the other proposals.⁵

Pursuant to Section 11-35-1530(7) of the Code, “[o]nce evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State...” However, MAXIMUS failed to present any evidence to support its argument in this regard. In fact, the only

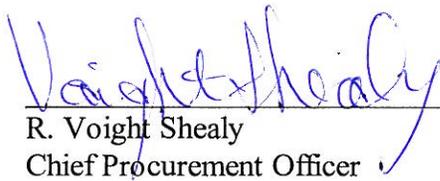
⁴ MAXIMUS did not question Mr. Boucher on his scores for the demonstrations.

⁵ MAXIMUS did not allege that the intended awarded vendor’s proposal (PSI’s) was nonresponsive.

evidence received by the CPO on this issue was from Mr. Covey, who testified that he determined that all four proposals met the essential requirements of the RFP and were responsive and therefore he submitted all four proposals to the evaluators for scoring. Accordingly, this argument also fails to support the protest.⁶

DETERMINATION

In summary, the CPO finds that MAXIMUS did not present any evidence that the State departed from the standards set forth in the Code and the RFP in its evaluation process. No evidence was presented that the evaluators disregarded all or any portion of MAXIMUS' proposal or scored it erroneously or unfairly. Moreover, no evidence was presented that the evaluators were biased or that they scored any of the offerors unfairly. To the contrary, the evidence presented reflects that the evaluators considered the information contained in the proposals and applied only the factors listed in the RFP in their scoring. Further, MAXIMUS failed to prove that the judgments the evaluators made of its proposal, based on the information contained in the proposal, were clearly erroneous. Therefore, MAXIMUS did not meet its burden of proof to demonstrate that the evaluators' determinations were clearly erroneous, arbitrary, capricious, or contrary to law. Accordingly, this protest is denied.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

7/6/2011

Date

Columbia, S.C.

⁶ Even if MAXIMUS had proven that PCG's proposal was non-responsive, MAXIMUS would have had to also show that the submission of the proposal to the evaluators had a material impact on the evaluation process. Since PCG was the lowest ranked offeror, the CPO fails to see how MAXIMUS could prove prejudice in this regard.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised October 2010)

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: www.procurementlaw.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 83.1 of the 2010 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2010 S.C. Act No. 291, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain 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).



David B. Summer, Jr.

Partner

Telephone: 803.253.8910

Direct Fax: 803.255.8017

daidssummer@parkerpoe.com

May 27, 2011

Via Email (protest-mmo@nmo.sc.gov) and Hand Delivery

Mr. Voight Shealy
Materials Management Officer
and Chief Procurement Officer, Supplies and Services
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Amendment to Protest of MAXIMUS of May 13, 2011 Notice of Intent to Award to Policy Studies, Inc. - Enrollment Broker Services/SCDHHS - Contract No. 440003742

Dear Mr. Shealy:

Pursuant to S.C.Code Ann. § 11-35-4210(b), MAXIMUS incorporates and amends its May 23, 2011 protest of the May 13, 2011 Notice of Intent to Award the above-referenced enrollment broker services contract to Policy Studies, Inc. After review of the proposals and other materials provided to MAXIMUS pursuant to its Freedom of Information Act request, MAXIMUS would add the following as further examples of the flawed, inconsistent, and arbitrary evaluation process:

1. Evaluator 5 makes this nonsensical notation as to AHS - "It appears that they are qualified to be competent for SC Based on documentation and recommendation. It is not recommended that RFP be awarded at this time". Evaluator 5 nevertheless awarded AHS 10 out of 10 for Qualifications.
2. Evaluator 4 indicated as to PCG - "Presented more on technology that afterwards still felt I had not learned or gained anything on how system actually worked." Yet this evaluator scored PCG's demonstration, from which she learned nothing, as 13 out of 15.¹

¹ In yet another scoring inconsistency, despite her assertion that she learned nothing about PCG's system from the demonstration, Evaluator 4 begins her explanation of her Demonstrations score with "I was impressed with the system."

CHARLESTON, SC
CHARLOTTE, NC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

This same evaluator wrote a glowing review of PSI's demonstration ("well prepared", "efficiently" presented, "innovative approaches"), but awarded them only one point higher than PCG, 14 of 15.

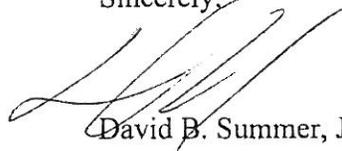
3. Evaluator 1 stated as to PCG - "don't seem to have much experience in enrollment broker services", yet he gave them a 9 out of 10 for Corporate qualifications. This same evaluator stated as to AHS - "based on their past and present experience, they seem to have very much experience." For having "very much experience", this evaluator scored AHS 7 out of 10.

4. Evaluator 2 stated as to MAXIMUS in her Demonstrations explanation- "didn't appear to know business model even though has been serving as enrollment broker for SCDHHS for 4 years", although the remainder of her notes and her separate explanation under the technical proposal criterion indicate that MAXIMUS did understand and did demonstrate to her the functionality of its system. This discrepancy, along with her statement that MAXIMUS "still appears to not understand SCDHHS and public needs", indicates both a preconceived bias and that this evaluator considered information and influences outside of the proposal process.

As noted in MAXIMUS' original protest letter, the above examples illustrate flaws and omissions in the evaluation process which prevented the State from determining the responsible and responsible offeror whose proposal was most advantageous to the State. Therefore, MAXIMUS requests that the results of the evaluation be set aside and a new procurement be conducted.

Please do not hesitate to contact me if you have any questions. With best regards, I am

Sincerely,



David B. Summer, Jr.

cc: Deirdre Singleton, Esq. (via email singled@scdhhs.gov)
Daniel W. Covey (via email dcovey@mimo.sc.gov)



David B. Summer, Jr.
Partner
Telephone: 803.253.8910
Direct Fax: 803.255.8017
davidsummer@parkerpoe.com

Charleston, SC
Charlotte, NC
Columbia, SC
Myrtle Beach, SC
Raleigh, NC
Spartanburg, SC

May 23, 2011

Via Email (protest-mmo@mmo.sc.gov) and Hand Delivery

Mr. Voight Shealy
Materials Management Officer
and Chief Procurement Officer, Supplies and Services
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

***Re: Protest of MAXIMUS of May 13, 2011 Notice of Intent to Award
to Policy Studies, Inc. - Enrollment Broker Services/SCDHHS - Contract No.
440003742***

Dear Mr. Shealy:

Pursuant to S.C.Code Ann. § 11-35-4210(b), MAXIMUS hereby protests the May 13, 2011 Notice of Intent to Award the above-referenced enrollment broker services contract to Policy Studies, Inc., on the grounds that the evaluation process in this case was so significantly flawed in its execution and implementation that it was impossible for the State to determine the responsive and responsible offeror whose proposal is the most advantageous to the State. Therefore, no award can be made and resolicitation is required.

Specifically, in support of its protest, MAXIMUS points to the following:

Background

MAXIMUS is the current provider of enrollment broker services for the State of South Carolina, Department of Health and Human Services. On February 7, 2011, the State issued a Request for Proposals to solicit these services for a new contract term. The RFP at page 54 lists the evaluation factors with weightings as follows:

50 Points: Technical Approach (Offeror's detailed explanation regarding how the scope of work will be performed and specifications will be met, including staffing)

Chief Procurement Officer

May 23, 2011

Page 2

- 25 Points: Price (Total price for first two years of contract including annual maintenance and license fees)
- 15 Points: Demonstrations (Demonstration of the completeness, robustness and ease of the proposed solution. The technical capabilities of the proposed solution to meet the needs of the State as defined in this RFP)
- 10 Points: Corporate Qualifications (References (corporate), experience, and/evidence of ability to conduct business in the State)

In response to the RFP, four offerors submitted proposals for evaluation: Automated Health Services (AHS), MAXIMUS, Public Consulting Group (PCG) and Policy Studies, Inc. The Department had five evaluators review and score the proposals.

Although the RFP clearly defined the requirements of the contract and required each proposal to address these requirements in detail, as revealed by the attached summary of scores, the evaluators judgments regarding compliance with the mandatory requirements varied significantly. (Exhibit "A", attached). Further, as revealed by the written justifications of the evaluators, the scoring was in many instances arbitrary, capricious, illogical, and not based on the evaluations factors set forth in the RFP. (Exhibit "B", attached). After consideration of the arbitrary scoring of the evaluators and of the objective price score supplied by the procurement officer, Policy Studies, Inc. was mathematically ranked as the top offeror. Specifically, the total points awarded per offeror were:

Policy Studies, Inc.	442
Automated Health Services	412.45
MAXIMUS	391.9
Public Consulting Group	316.45

Based on these results, on May 13, 2011, the State issued its Notice of Intent to Award the contract to Policy Studies, Inc.

Issues

The South Carolina Consolidated Procurement allows the procurement of services through the Request for Proposal process provided the requirements of Section 11-35-1530 are met. Among the requirements are that "proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have previously been assigned." Therefore, a sound, objective, and defensible procurement process that is built around a Request for Proposals (RFP) must, at a minimum, include two elements. The screening and evaluation process must identify any proposal lacking the required minimum elements and must either disqualify that proposal from any further consideration or must be reliable enough to recognize and sufficiently penalize the noncompliance in the scoring process. The process must also be conducted in manner that enables the evaluators to objectively compare a proposal's

technical solution content to the primary required elements in the scope of work to identify the "most advantageous" offer.

The RFP at issue contains detailed statements of the qualifications needed by the successful contractor as well as detailed specifications of the Scope of Work required to compete the contract. Despite these detailed requirements, the evaluation process in this case was conducted without a compliance screen to determine whether each response contained the mandatory items and was, at a minimum, responsive and responsible.

For example, one of the offerors, Public Consulting Group, submitted a proposal which failed to address or include numerous elements required by the RFP. The lack of initial compliance screening enabled this non-responsive proposal and/or non-responsible offerer to be considered along with proposals which actually complied with the requirements of the RFP.

Further, the evaluators in this case were given a technical solution evaluation sheet which consisted only of a single sheet in which each evaluator recorded the total number of points available in four categories. The lack of any instructions or methodology to objectively and demonstratively link the points for "Technical Solution," "Demonstrations" and "Corporate Qualifications" to meaningful evaluation criteria produced evaluation results that were unsupportable, *ad hoc*, inconsistent, and unreliable.

Again, for example, Public Consulting Group received significantly high scores despite its submission of a proposal that, on its face, was objectively and verifiably non-responsive.¹ Despite its obvious lack of responsiveness, PCG produced a technical score of 179 points compared to the highest-scoring technical solution of 202. This disparity is *prima facie* evidence that the evaluation process in this case was so flawed that it failed to reliably and accurately identify the most advantageous proposal.

¹ In Section 1.1.3 (Implementation), the RFP requires the submission of a work plan that "details the specific timeframes, tasks, responsibilities, and key milestones to be achieved in the implementation period." This section then delineates seven specific items that must be included in the work plan. PCG's work plan on p. 99 of its proposal fails to meet the RFP's requirements and provides a level of detail that is fundamentally and irrefutably non-responsive to the scope of work and the complexity of the implementation. Further, Section 3.2.4 of the RFP delineates six deliverables that must be submitted "with the proposal". PCG provided none of these deliverables in its proposal. Finally, in literally dozens of places in its response, Public Consulting Group (PCG) failed to provide the "detailed description of the manner in which the offeror proposes to perform the responsibilities detailed in each section of the Scope of Work. In numerous places in its proposal, PCG merely acknowledged particular requirements and assented to perform them or repeated back verbatim the language of the RFP. Several examples of many can be found in their responses to Sections 3.9.1, 3.10.4, and 3.12. Unlike the other proposals, which provided responses that indicated how each offeror would actually perform the work or meet the requirements, PCG provided answers that were either non-responsive or so lacking in details as to be unworthy of anything other than a very low score.

Finally, the evaluation process was conducted in a manner that allowed evaluators to consider information and factors not set forth in the RFP and to score proposals on these arbitrary factors.

The justifications given by the evaluators for their scores illustrate the lack of a rational and methodologically sound evaluation process. These include:

1. Evaluator #2 stated that PSI had "limited market experience" yet gave them a 10 out of 10 for Corporate Qualifications.
2. Evaluator #5 stated that PCG "does not have the experience needed to obtain SCDHHS RFP EB" yet gave them a 6 for Corporate Qualifications. This evaluator gave the same score (6 of 10) to MAXIMUS, the current South Carolina enrollment broker vendor, whose references on other state enrollment broker contracts uniformly rated MAXIMUS excellent.
3. Evaluator #2 noted that "no reference given in which PCG holds primary contract" yet 2 evaluators (1 & 4) gave PCG 9 out of 10 points for having the requisite corporate qualifications. These same evaluators, 1 and 4, gave MAXIMUS an identical score (9 of 10) despite MAXIMUS being the current primary contractor in South Carolina and the primary contractor on numerous contracts listed in its references.
4. Evaluator #2 stated that PCG "should have focused on enrollment function". Evaluator #3 stated that PCG's demonstration contained, "little demo of EB functions, knowledge of call center very limited". This same evaluator (3) stated with regard to MAXIMUS that its "demonstration displayed all areas of functionality, including web portal and call recording capabilities". Yet, three evaluators (2, 4 & 5) scored the PCG demo the same or significantly better than MAXIMUS.
5. A review of the attached score sheet reveals that the evaluation process in this case produced one set of outlier scores from Evaluator 5 that cannot be explained or justified except within the context of a process that was fatally flawed for its arbitrariness and lack of reference to the requirements of the RFP.
6. The RFP listed "Demonstrations" as an evaluation factor and explained this category as concerning "Demonstration of the completeness, robustness and ease of the proposed solution. The technical capabilities of the proposed solution to meet the needs of the State as defined in this RFP." However, the following comments of the evaluators indicate that scoring was based on factors other than criteria contained in the RFP:

"poor energy level, read from scripts" (Evaluator 2)

"shouldn't have read their presentation" (Evaluator 5)

"great energy level, engaged audience, did not read from scripts" (Evaluator 2)

“some parts of the demo was interesting. some points were very bland” (Eval. # 1)

“good energy, not reading from scripts” (Evaluator 2)

“I was impressed with the system; however, the presentation of it was unimpressive. For example, when one of the members tried to present; another member of their staff seemed to interrupt which was rather rude. This over anxious attitude to interrupt others when speaking made it seem as if the person presenting was not competent in how to explain the material.” (Evaluator 4)

“Poor energy level, read from scripts entire time – makes audience feel presenters don’t know business.” (Evaluator 2)

“The deliverance of their product was delivered. However, the members could have been more livelier.” (Evaluator 4)

“Wasn’t keen on the idea of them reading the presentation.”

(Exhibit “B”, attached hereto). The focus in these illustrative comments regarding the demonstration indicates that many of the evaluators were judging the presenters on their speaking or entertainment skills rather than the technical functionality of the product, as required by the RFP.

7. Several of the evaluators (2 & 5) made reference to MAXIMUS being in “litigation in Virginia”. These assertions are false and were not part of any response provided by MAXIMUS or its references. Again, this illustrates that the evaluators lacked guidance in this flawed process and, therefore, they considered matters outside the scope of the RFP.

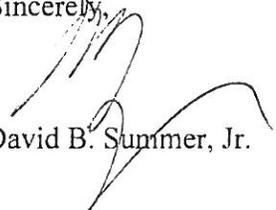
The above examples illustrate flaws and omissions in the evaluation process which prohibited the State from determining the responsible and responsible offeror whose proposal was most advantageous to the State. Therefore, MAXIMUS requests that the results of the evaluation be set aside and a new procurement conducted with an evaluation process that includes the necessary items of a compliance screen and an evaluation tool that can be reasonably expected to produce the outcome that the State indicates it wants and expects, as defined in Section VI (Award Criteria).

Chief Procurement Officer
May 23, 2011
Page 6

MAXIMUS reserves the right to amend this protest within the time allowed by law after MAXIMUS has had adequate time to review the proposals and other bid information provided to it on Friday, May 20th. Further MAXIMUS respectfully requests a hearing before the Chief Procurement Officer with regard to its protest of this solicitation. Please do not hesitate to contact me if you have any questions.

With best regards, I am

Sincerely,



David B. Summer, Jr.

DBSjr:faf
Enclosures

cc: Deirdre Singleton, Esq. (via email singled@scdhhs.gov)
Daniel W. Covey (via email dcovey@mimo.sc.gov)