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W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Protest Decision

Matter of: Automated Health Systems, Inc.

Case No.: 2017-124

Posting Date: February 1, 2017

Contracting Entity: South Carolina Department of Health and Human Services

Solicitation No.: 5400011717

Description: Enrollment Broker Services

DIGEST

Protest alleging improper evaluation is denied. Automated Health Systems, Inc.'s (AHS) letter of protest and amendment are included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

This Request for Proposals was issued by the South Carolina Department of Health and Human Services under a delegation by the Chief Procurement Officer. Proposals were received from Automated Health Systems, Inc. and Maximus Health Services, Inc. (Maximus)

<i>Event</i>	<i>Date</i>
Solicitation Issued	07/13/2016
Amendment 1 Issued	08/25/2016
Intent to Award Posted	11/17/2016
Protest Received	11/28/2016
Amended Protest Received	12/02/2016

ANALYSIS

AHS' first issue of protest:

1. The ITMO placed an unfair and improper emphasis on price, and an improper emphasis on the score of one evaluator.

ITMO used an improper scoring methodology to evaluate proposals. The purpose of using multiple evaluators is to elicit multiple perspectives in the assessment of the technical and qualifications of each vendor. However, price is an objective and numerical component to the evaluation and should not be applied to each evaluator. Accordingly, the correct and proper evaluation that appropriately factors the various perspectives of the evaluators for the Technical and Qualifications components, and appropriately weighs the Price Component is identified in Exhibit 1. ... When correcting for the improper methodology used by ITMO, the actual difference between Maximus' and AHS' score is 0.37, which is easily overcome by the improper technical evaluations identified in the issues below.

The price proposed by Maximus was \$31,902,694.15. The price proposed by AHS was \$35,248,312.04. AHS' price was \$3,345,617.89 or 10.5% higher than the price proposed by Maximus. The State employed a standard mathematical formula that was reviewed by the Procurement Review Panel nearly 30 years ago. In *Protest of Polaroid Corporation*, Panel Case 1988-12, the Panel wrote:

Cost in this case was evaluated using a standard mathematical formula. The Panel can find nothing unfair or unreasonable in crediting each proposal for its price in this objective way and rejects Polaroid's argument in this regard.

The difference in price resulted in AHS receiving 22.63 points for price from each evaluator while Maximus received the full 25 points from each evaluator. AHS argues that the evaluators should have only awarded the 45 points for technical and 30 points for the qualifications criteria and once all the evaluator's scores were totaled the State should have added the points for price. There were three evaluation criteria listed in the solicitation with a total weight of 95 points. Price was weighted at 25 points or 26% of the evaluation. In this case there were four evaluators. Assuming AHS' evaluation methodology, each evaluator would have awarded up to 75 points for a total of 300 points and the 25 points for price would now only account for 8% of the evaluation. The more evaluators, the more diluted the effect of price on the evaluation. Section 11-35-1530(7) requires:

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.

The process suggested by AHS would change the weightings assigned to the evaluation criteria and violate the Code. AHS' issue with the evaluator will be addressed in the next issue of protest. This issue of protest is denied.

AHS next protests:

2. The award to Maximus was not based solely on the evaluation criteria contained in the request for proposals.

Evaluator Number 3 awarded Maximus 40 points for Technical Approach and awarded AHS 38 points for Technical Approach. The Evaluation Summaries completed by Evaluator Number 3 do not appear to contain any noticeable differences between Maximus and AHS. Both summaries refer to enhanced reporting and the use of beneficiary engagement through multiple methods. AHS appears to have the edge because the Evaluator 3 mentions that Maximus's "member contact is **limited to** web chats, text messages" and the "Improved

reporting ... may be **limited to** enhanced internal processes.” (emphasis added). In other words, Evaluator 3, in the only evidence we have of the thought process used by the evaluator, takes a negative view of Maximus’s Technical Approach. There is no evidence of a negative evaluation being given to AHS in the Evaluation Summary prepared by Evaluator 3. There is no apparent reason on the Evaluation Summary for AHS as to why AHS’s Technical Approach score would be less than the score given to Maximus. One can only be left to conclude that the score given by Evaluator 3 was clearly erroneous, arbitrary, and capricious.

In attempting to discern why Evaluator 3 was at odds with the other evaluators, the apparent difference, and the error, in Evaluator 3’s method was to list Qualifications for Maximus in both the Technical Response and in the Qualifications sections of the Evaluation Summary. In each section of the Evaluation Summary, Evaluator 3 identically listed that Maximus “Support[s] 9 of 13 Dual Demos in the U.S.” and that Maximus has “20 current projects 9 operating 10 or more years.” This information, i.e., 9 of 13 Dual Demos, and 20 current projects, can be found in Section D.2 of Maximus’s proposal at pages D.2-1 and D.2-4. The information supplied by Maximus in Section D.2 concerns Qualifications. Section 5 of the RFP required offerors to submit information concerning qualifications separate from the technical proposals to be included in Section C of any proposals.

It was clear error for Evaluator 3 to include and take into account the same information concerning Qualifications under two separate scoring criteria. On information and belief, this led to the scoring difference given by Evaluator Number 3. But for this scoring error, AHS would have been selected for the award.

S. C. Code Ann. § 11-35-2410 provides for the finality of determinations under the RFP process unless “clearly erroneous, arbitrary, capricious, or contrary to law.” AHS argues that the scoring by evaluator 3 was arbitrary, capricious, and clearly erroneous. AHS has the burden to prove its issue by a preponderance of the evidence. The Procurement Review Panel has stated that “the Panel will not substitute its judgment for the judgment of the evaluators, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.” *Appeal by Coastal Rapid Public Transit Authority*, Panel Case No. 1992-16.

Evaluator scoring is reproduced below:

AHS	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Total
Technical	42	40	38	39	159
Qualifications	30	25	26	23	104
Total	72	65	64	62	

Maximus	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Total
Technical	38	35	40	34	147
Qualifications	30	25	28	25	108
Total	68	60	68	59	

Totaling the scores from the four evaluators for the technical and qualifications criteria, AHS ranged from 72 to 62 with the lowest score coming from Evaluator 4. The Maximus technical and qualification scores ranged from 68 to 59 with the lowest score coming again from Evaluator 4. Evaluator 3’s AHS score of 64 is in line with Evaluator 2’s score of 65 and Evaluator 4’s score of 62. Evaluator 3’s technical and qualifications score for Maximus was 68 which is the same as Evaluator 1. AHS stated in its protest that the Evaluation Summaries completed by Evaluator Number 3 do not appear to contain any noticeable differences between Maximus and AHS. Evaluator 3’s scores are in line with the other evaluators and there is no indication that the scoring was arbitrary or capricious. This issue of protest is denied.

AHS next protests:

3. On information and belief, the evaluators did not account for negative sanctions, penalties, and corrective actions against Maximus.

The failure to account for negative sanctions, penalties, and corrective actions against Maximus improperly elevated the score given to Maximus for the Qualifications criteria. Offerors were required to provide information concerning any damages, penalties or credits issued that they have paid or that have been asserted against the offerors. It appears that Maximus provided some information in this regard, starting on page D.4-1 of its proposal, but the information has been redacted and AHS is unable to determine whether this information was accurate, or how this information would have compared to AHS’s submission.

In any event, this information should have counted towards some deduction in the points awarded for Qualifications. It does not appear that the Evaluators took this

information into account. Specifically, Evaluator 1 awarded full points to Maximus for Qualifications with no deductions. Evaluator 3 deducted only 2 points from Maximus in the Evaluation criteria, whereas this evaluator deducted 4 points from AHS's proposal without any explanation for the deductions. Information concerning penalties and damages assessed should not be requested in the RFP if evaluators are not going to use it in their evaluations.

But for the Evaluators' failure to account for negative sanctions, penalties, and corrective actions, AHS would have been selected for the award.

As stated above, the evaluator scoring was consistent, there is no evidence of actual bias or that the scoring was arbitrary, or capricious. There is no evidence that the proposals were not fairly considered. AHS failed to meet its burden of proof and this issue of protest is denied.

AHS next protests:

4. Maximus may not have provided the required information or disclosed negative client actions against Maximus.

Section D of the RFP required offerors to submit detailed information concerning the offeror's qualifications. The submission by Maximus concerning its qualifications, including Corporate Background and Financial Reports, Relevant Experience and References, Financial Information, and Penalties and Damages Assessed, is highly redacted. On information and belief, Maximus did not provide the required information for Qualifications, and the offer should have been rejected as nonresponsive.

This claim is nothing more than conjecture and fails to meet the burden of proof.

AHS' protest that Maximus' proposal is non-responsive is denied.

AHS next protests:

5. Based on the highly competitive nature of the two proposals submitted, ITMO should have sought best and final offers from Maximus and AHS. It was error not to seek best and final offers from Maximus and AHS under the circumstances present in this matter.

Section 11-35-1530(8) stipulates that the decision to solicit best and final offers is in the procurement officer's sole discretion and not subject to review:

Whether price was an evaluation factor or not, the procurement officer, *in his sole discretion and not subject to review under Article 17*, may proceed in any of the manners indicated below, except that in no case may confidential information derived from proposals and negotiations submitted by competing offerors be disclosed:

(a) negotiate with the highest ranking offeror on price, on matters affecting the scope of the contract, so long as the changes are within the general scope of the request for proposals, or on both....

*** or

(c) the procurement officer may make changes within the general scope of the request for proposals and may provide all responsive offerors an opportunity to submit their best and final offers.

(emphasis supplied) The procurement officer exercised her discretion and proceeded pursuant to § 11-35-1530(8)(a). She was not obligated to seek best and final offers. *See Appeal by Andersen Consulting*, Panel Case No. 1994-1 (“The State has a duty to get best and final offers if the State chooses to proceed under Code Section 11-35-1530 (11)(3), which the State did not do in this case.” (Former § 11-35-1530(11)(3) has been recodified with minor changes as § 11-35-1530(8)(c)). The CPO lacks jurisdiction to review the procurement officer’s election, and this issue of protest is denied.

AHS next protests:

6. The ITMO failed to conduct a proper cost technical trade-off analysis.

The RFP states that award will be made “to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State.” This determination of “most advantageous to the State” requires a trade-off of cost versus technical. It does not appear that this tradeoff was made. Instead, the outcome suggests that price was the primary and dominant factor and that the award was given to the offeror with the lowest price. It does not appear that any tradeoff occurred to consider and identify the offer most advantageous to the state. If the proper consideration had been made, ITMO would have determined that AHS would have been the most advantageous.

Section 11-35-1530 requires that all responsive offerors be ranked from most advantageous to least advantageous to the State. It does not appear that this occurred.

There were three evaluation criteria: Technical Approach, Qualifications, and Price. Weights were assigned and published in the solicitation. The trade-off² of cost versus technical was established when the evaluation criteria and weights were published in the solicitation. To the extent AHS objects to those criteria, it must have protested within fifteen days after the solicitation was posted. S.C. Code Ann. § 11-35-4210(1)(a). Since it did not, any challenge is untimely.

Section 11-35-1530(7) of the Code stipulates:

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.

Proposals were evaluated and ranked in accordance with the Code. No additional analysis of cost versus technical is permissible or necessary. This issue of protest is denied.

AHS next protests:

7. The offer submitted by Maximus did not conform to the essential requirements of the RFP and/or improperly attempted to modify the RFP and impose conditions.

Based on the reasons set forth in Issues 2, 3, 4, and 6, AHS asserts that the offer submitted by Maximus did not conform to the essential requirements of the RFP and/or improperly attempted to modify the RFP and impose conditions.

Protest issues 2, 3, 4, and 6 were addressed above and no violations of the Code were found. For the reasons cited above, this issue of protest is denied.

AHS next protests:

8. The lower cost for implementation was improperly accounted for by the evaluators in the Technical criteria.

² In federal procurements, FAR Subpart 15.101-1 defines “tradeoff process” in the context of competitive negotiations. There is no directly corresponding concept under South Carolina’s Code.

At least two evaluators appear to have taken into account the implementation time and/or cost for the incumbent under the criteria for Technical Response. This was error, and affected the Technical score for the incumbent Maximus. This factor should not have been included in the Technical criteria as it is already represented in the cost proposal.

A proposed solution with a one-month implementation time affects agency operations differently as a proposed solution that requires a six month implementation. While the cost to implement a project is a valid component of the price of a proposed solution, so too is the time and the associated impact on agency operations a valid consideration of the technical evaluation. Implementation time is a valid consideration in the technical evaluation. This issue of protest is denied.

AHS next protests:

9. The ITMO placed an unfair and improper emphasis on the cost of implementation, and penalized a non-incumbent vendor both by price and technical scoring.

The evaluation improperly penalized non-incumbent contractors. The State factored in the Total Cost of Ownership into the Cost Proposal, which penalizes non-incumbent contractors and rewards the incumbent contractor who requires minimal, if any, implementation time. Further, all Evaluators recognized that the minimal implementation time required by Maximus was a reason behind their Technical Score. However, the Cost Proposal scoring already factored in the implementation benefits associated with incumbency and factoring it in twice unfairly benefits Maximus.

HHS published the methodology for calculating the Total Enterprise Cost of Ownership in Amendment 1. The Amendment provided in part:

Total Enterprise Cost

Establishing comparable prices on a fixed duration contract where the Offerors propose their own implementation schedules is challenging because the financial “burn rate” during implementation differs from that during operations. To help correct for this bias and to incentivize efficient schedules, the State is using Total Enterprise Cost for the purposes of scoring Proposals (see RFP Section 6 for further information). The Total Enterprise Cost incorporates the Offeror’s proposed prices and adds the Labor Rates Evaluation Purposes Only prices and

the estimated costs of operating the Enrollment Broker project within the Department. **The State shall use \$16,000 per calendar month, plus an additional one-time amount of \$32,000 for IT resources, as its estimated Enrollment Broker project operating costs.**

Calculating the Total Enterprise Cost. This is done by adding the total prices from the other pricing tables, except for adding the State's Cost to Maintain the Project by multiplying the project burn rate of \$16,000 per month, plus an additional one-time amount of \$32,000 for IT resources, by the Offeror-proposed number of Implementation Phase months minus 1 month.

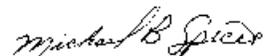
[Amendment 1, page 3 (emphasis in original)] To the extent AHS objects to that method of calculation, it must have protested within fifteen days after the amendment was issued. S.C. Code Ann. § 11-35-4210(1)(a). Since it did not, any challenge is untimely.

Regulation 19-445.2140(B) requires, to the extent practicable, that the State take into account the total cost of ownership and operation as well as the initial acquisition costs. Implementation directly affects the cost of the project. Implementation also affects the agency in ways that are not reflected in the direct cost such as agency staff time required to assist with the implementation and more importantly, the time before the agency can take incorporate the goods or services being acquired into the agency's delivery of services to its constituents. Both cost and time are valid evaluation considerations. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of Automated Health Systems, Inc., is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

RILEY POPE & LANEY, LLC
ATTORNEYS AND COUNSELORS AT LAW

TELEPHONE
(803) 799-9993

2838 DEVINE STREET
POST OFFICE BOX 11412 (29211)
COLUMBIA, SOUTH CAROLINA 29205

FACSIMILE
(803) 239-1414

November 28, 2016

Via e-mail (protest-itmo@itmo.sc.gov), facsimile (803-737-0102), and regular mail

Michael B. Spicer
Chief Procurement Officer
Information Technology Management Office
1201 Main Street
Suite 600
Columbia, SC 29201

Re: Protest of Solicitation 5400011717 to Provide Enrollment Broker Services for the SC Department of Health and Human Services

Dear Mr. Spicer:

Pursuant to S.C. Code Ann. § 11-35-4210, please consider this letter to constitute the protest of Automated Health Systems, Inc. ("AHS") to the Notice of Intent to Award the contract for services described in Solicitation 5400011717 to Maximus Health Services, Inc., to provide Enrollment Broker Services to the South Carolina Department of Health and Human Services ("DHHS"). The Intent to Award was posted on November 17, 2016.

This protest is timely filed within the deadline set by the Intent to Award. The tenth day for timely filing this protest fell on Sunday, November 27, 2016. The deadline is extended to the next business day pursuant to S.C. Code Ann. § 11-35-310(13) ("If the final day of the designated deadline period falls on a Saturday [or] Sunday . . . then the period shall run to the end of the next business day."). As this protest is timely filed, AHS also requests a stay of the procurement during the pendency of its protest. S.C. Code Ann. § 11-35-4210(d)(7).

AHS is an aggrieved party with a right to protest. AHS submitted a proposal in response to Solicitation 5400011717. Upon information and belief, AHS submitted one of two proposals, and AHS was ranked the second most advantageous proposal to the government. But for the improper actions and evaluations by the Information Technology Management Office ("ITMO"), AHS would have been selected for the award. Therefore, AHS has been prejudiced by the ITMO's actions.

A. GROUNDS FOR PROTEST

1. The ITMO placed an unfair and improper emphasis on price, and an improper emphasis on the score of one evaluator.

Price was overemphasized in the evaluation scheme. AHS was awarded 22.63 points for price by every evaluator. Each evaluator awarded Maximus the full 25 points for price. This constituted the very minor difference in the total scoring evaluation. There is no logical reason to have given the lowest

price the full 25 points for price. This starting point places a greater emphasis on price. ITMO unfairly and unreasonably reduced AHS's price score in proportion to Maximus.

After tallying all of the scores, Maximus was awarded 355 points. AHS was awarded a total of 353.52 points. If the pricing scores are removed, or given different weight, AHS comes out eight (8) points ahead of Maximus.

The State's cost evaluation methodology added each Evaluator's score for the technical score, and did not average all scores. By virtue of summing all scores, the actual difference between the scores was magnified, which allowed the difference in price to be overstated. For example, if the State sums the total technical scores, AHS scores 263 and Maximus scores 255, but if the State averages the scores, the technical scores are 65.75 for AHS and 63.75 for Maximus. Accordingly, by not averaging the price score, the difference in amounts is magnified.

Moreover, AHS received the highest total scores from 3 out of the 4 evaluators. This unfairly puts the award of the contract into the hands of one evaluator rather than taking into consideration that a majority of the evaluators rated AHS's proposal significantly higher than Maximus.

2. The award to Maximus was not based solely on the evaluation criteria contained in the request for proposals.

As mentioned above, 3 out of the 4 evaluators rated AHS higher than Maximus. For each of these three evaluators, AHS was given scores that exceeded Maximus for the Technical Approach and Qualifications. The remaining evaluator was an outlier, giving Maximus four (4) more points than AHS for these two criteria. This evaluator improperly graded Maximus and appears to have taken Maximus's Qualifications into account when awarding points for Technical Approach.

Evaluator Number 3 awarded Maximus 40 points for Technical Approach and awarded AHS 38 points for Technical Approach. The Evaluation Summaries completed by Evaluator Number 3 do not appear to contain any noticeable differences between Maximus and AHS. Both summaries refer to enhanced reporting and the use of beneficiary engagement through multiple methods. AHS appears to have the edge because the evaluator mentions that Maximus's "member contact is **limited to** web chats, text messages" and the "Improved reporting . . . may be **limited to** enhanced internal processes." (emphasis added).

The most glaring difference, however, and the error in Evaluator Number 3's method was to list apparent Qualifications for Maximus in both the Technical Response and in the Qualifications sections of the Evaluation Summary. In each section, Evaluator Number 3 identically listed that Maximus "Support[s] 9 of 13 Dual Demos in the U.S." and that Maximus has "20 current projects – 9 operating 10 or more years." This is clear error to include and take into account the same information under two separate scoring criteria. On information and belief, this led to the scoring difference given by Evaluator Number 3. But for this scoring error, AHS would have been selected for the award.

3. On information and belief, the evaluators did not account for negative sanctions, penalties, and corrective actions against Maximus.

The failure to account for negative sanctions, penalties, and corrective actions against Maximus improperly elevated the score given to Maximus for the Qualifications criteria. But for this failure to

account for negative sanctions, penalties, and corrective actions, AHS would have been selected for the award.

4. Maximus may not have provided the required information or disclosed negative client actions against Maximus.

Section D of the RFP required offerors to submit detailed information concerning the offeror's qualifications. The submission by Maximus concerning its qualifications, including Corporate Background and Financial Reports, Relevant Experience and References, Financial Information, and Penalties and Damages Assessed, is highly redacted. On information and belief, Maximus did not provide the required information for Qualifications, and the offer should have been rejected as nonresponsive.

5. Based on the highly competitive nature of the two proposals submitted, ITMO should have sought best and final offers from Maximus and AHS.

It was error not to seek best and final offers from Maximus and AHS under the circumstances present in this matter.

6. The ITMO failed to conduct a proper cost technical trade-off analysis.

The RFP states that award will be made "to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State." This determination of "most advantageous to the State" requires a trade-off of cost versus technical. It does not appear that this tradeoff was made. Instead, the outcome suggests that price was the primary and dominant factor and that the award was given to the offeror with the lowest price. It does not appear that any tradeoff occurred to consider and identify the offer most advantageous to the state. If the proper consideration had been made, ITMO would have determined that AHS would have been the most advantageous.

Section 11-35-1530 requires that all responsive offerors be ranked from most advantageous to least advantageous to the State. It does not appear that this occurred.

7. The offer submitted by Maximus did not conform to the essential requirements of the RFP and/or improperly attempted to modify the RFP and impose conditions.

8. The lower cost for implementation was improperly accounted for by the evaluators in the Technical criteria.

At least two evaluators appear to have taken into account the implementation time and/or cost for the incumbent under the criteria for Technical Response. This was error, and affected the Technical score for the incumbent Maximus. This factor should not have been included in the Technical criteria as it is already represented in the cost proposal.

9. The ITMO placed an unfair and improper emphasis on the cost of implementation, and penalized a non-incumbent vendor both by price and technical scoring.

The evaluation improperly penalized non-incumbent contractors. The State factored in the Total Cost of Ownership into the Cost Proposal, which penalizes non-incumbent contractors and rewards the incumbent contractor who requires minimal, if any, implementation time. Further, all Evaluators

recognized that the minimal implementation time required by Maximus was a reason behind their Technical Score. However, the Cost Proposal scoring already factored in the implementation benefits associated with incumbency and factoring it in twice unfairly benefits Maximus.

AHS reserves its right to amend this protest within the applicable time frames, and upon further investigation and discovery of the facts involved in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter M. Balthazor". The signature is fluid and cursive, with a prominent loop at the end.

Peter M. Balthazor

RILEY POPE & LANEY, LLC
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET
POST OFFICE BOX 11412 (29211)
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE
(803) 799-9993

FACSIMILE
(803) 239-1414

December 2, 2016

Via e-mail (protest-itmo@itmo.sc.gov), and facsimile (803-737-0102)

Michael B. Spicer
Chief Procurement Officer
Information Technology Management Office
1201 Main Street
Suite 600
Columbia, SC 29201

Re: Amendment to Protest of Solicitation 5400011717 to Provide Enrollment Broker Services for the SC Department of Health and Human Services

Dear Mr. Spicer:

Automated Health Systems, Inc. ("AHS") respectfully submits the following amendment to its timely protest of this matter, challenging the Information Technology Management Office's ("ITMO") intent to award the Enrollment Broker Services contract to Maximus. This amendment is timely filed within five (5) days of AHS's initial protest. This amendment provides additional detail and argument concerning this issues raised in AHS's November 28, 2016 protest letter.

A. AMENDED GROUNDS FOR PROTEST

1. The ITMO placed an unfair and improper weighting and emphasis on price, and an improper emphasis on the score of one evaluator.

ITMO used an improper scoring methodology to evaluate proposals. The purpose of using multiple evaluators is to elicit multiple perspectives in the assessment of the technical and qualifications of each vendor. However, price is an objective and numerical component to the evaluation and should not be applied to each evaluator. Accordingly, the correct and proper evaluation that appropriately factors the various perspectives of the evaluators for the Technical and Qualifications components, and appropriately weighs the Price Component is identified in Exhibit 1.

Exhibit 1. Unbiased Scoring Methodology

		Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Sum	Average	Cost	Final Score
Ma xim us	Tech	38	35	40	34	147	36.57		
	Qualifications	30	25	28	25	108	27.00		
							= 63.75	25	88.75
AH S	Tech	42	40	38	39	159	39.75		
	Qualifications	30	25	26	23	104	26.00		
							= 65.75	22.63	88.38

When correcting for the improper methodology used by ITMO, the actual difference between Maximus’ and AHS’ score is 0.37, which is easily overcome by the improper technical evaluations identified in the issues below.

AHS received the highest total scores from 3 out of the 4 evaluators. By adding a fixed pricing score to each evaluator’s technical score, the State mixed individual technical scores with a proportional pricing score. This methodology of mixing individual technical scores with a fixed proportional pricing score unfairly and arbitrarily magnified the impact of pricing.

The evaluator score sheets and evaluation summaries are attached hereto as Exhibit A.

2. The award to Maximus was not based solely on the evaluation criteria contained in the request for proposals.

As mentioned above, 3 out of the 4 evaluators rated AHS higher than Maximus based on the sum of the scores for Technical Approach, Qualifications, and Price. For each of these three evaluators (Evaluators 1, 2, and 4), AHS was given scores that exceeded Maximus for the Technical Approach and Qualifications. The remaining evaluator (Evaluator 3) was an outlier, giving Maximus four (4) more total points than AHS for these two criteria. This evaluator improperly graded Maximus and appears to have taken Maximus’s Qualifications into account when awarding points for Technical Approach.

Evaluator Number 3 awarded Maximus 40 points for Technical Approach and awarded AHS 38 points for Technical Approach. The Evaluation Summaries completed by Evaluator Number 3 do not appear to contain any noticeable differences between Maximus and AHS. Both summaries refer to enhanced reporting and the use of beneficiary engagement through multiple methods. AHS appears to have the edge because the Evaluator 3 mentions that Maximus’s “member contact is **limited to** web chats, text messages” and the “Improved reporting . . . may be **limited to** enhanced internal processes.” (emphasis added). In other words, Evaluator 3, in the only evidence we have of the thought process used by the evaluator, takes a negative view of Maximus’s Technical Approach. There is **no** evidence of a negative evaluation being given to AHS in the Evaluation Summary prepared by Evaluator 3. There is no apparent reason on the Evaluation Summary for AHS as to why AHS’s Technical Approach score would be less than the score given to Maximus. One can only be left to conclude that the score given by Evaluator 3 was clearly erroneous, arbitrary, and capricious.

In attempting to discern why Evaluator 3 was at odds with the other evaluators, the apparent difference, and the error, in Evaluator 3's method was to list Qualifications for Maximus in both the Technical Response and in the Qualifications sections of the Evaluation Summary. In each section of the Evaluation Summary, Evaluator 3 identically listed that Maximus "Support[s] 9 of 13 Dual Demos in the U.S." and that Maximus has "20 current projects – 9 operating 10 or more years." This information, i.e., 9 of 13 Dual Demos, and 20 current projects, can be found in Section D.2 of Maximus's proposal at pages D.2-1 and D.2-4. The information supplied by Maximus in Section D.2 concerns Qualifications. Section 5 of the RFP required offerors to submit information concerning qualifications separate from the technical proposals to be included in Section C of any proposals.

It was clear error for Evaluator 3 to include and take into account the same information concerning Qualifications under two separate scoring criteria. On information and belief, this led to the scoring difference given by Evaluator Number 3. But for this scoring error, AHS would have been selected for the award.

In order to correct this error, AHS requests that the Score Sheet for Evaluator 3 be eliminated and that the contract be awarded to AHS based on the cumulative scores of the other three evaluators. Due to the close scoring, failure to correct this error will result in the improper award to Maximus.

3. On information and belief, the evaluators did not account for negative sanctions, penalties, and corrective actions against Maximus.

The failure to account for negative sanctions, penalties, and corrective actions against Maximus improperly elevated the score given to Maximus for the Qualifications criteria. Offerors were required to provide information concerning any damages, penalties or credits issued that they have paid or that have been asserted against the offerors. It appears that Maximus provided some information in this regard, starting on page D.4-1 of its proposal, but the information has been redacted and AHS is unable to determine whether this information was accurate, or how this information would have compared to AHS's submission.

In any event, this information should have counted towards some deduction in the points awarded for Qualifications. It does not appear that the Evaluators took this information into account. Specifically, Evaluator 1 awarded full points to Maximus for Qualifications with no deductions. Evaluator 3 deducted only 2 points from Maximus in the Evaluation criteria, whereas this evaluator deducted 4 points from AHS's proposal without any explanation for the deductions. Information concerning penalties and damages assessed should not be requested in the RFP if evaluators are not going to use it in their evaluations.

But for the Evaluators' failure to account for negative sanctions, penalties, and corrective actions, AHS would have been selected for the award.

4. Maximus may not have provided the required information or disclosed negative client actions against Maximus.

Section D of the RFP required offerors to submit detailed information concerning the offeror's qualifications. The submission by Maximus concerning its qualifications, including Corporate Background and Financial Reports, Relevant Experience and References, Financial Information, and Penalties and Damages Assessed, is highly redacted. On information and belief, Maximus did not

provide the required information for Qualifications, and the offer should have been rejected as nonresponsive.

Upon information and belief, the redactions made by Maximus are improper. The redactions made by Maximus in Section D of its proposal do not comply with the instructions provided in the RFP, and they do not comply with applicable state Code sections. Section 2.29 of the RFP explains the requirements for offerors to submit information that is deemed to be either Confidential, a Trade Secret, or Protected.

Maximus has indicated that the information that it redacted from Section D of its proposal was Confidential. Confidential information is defined in Section 11-35-410 of the South Carolina Code as information “not customarily released to the general public, the release of which might cause harm to the competitive position of the party supplying the information.” Examples of such information include customer lists, design recommendations, design concepts, and biographical data.

The information redacted by Maximus concerning penalties and damages assessed is not “confidential” information and should not have been redacted. This information, concerning possible penalties and damages assessed by public entities would be public information, which should be available to AHS, along with the public at large. For example, AHS is aware of an audit conducted of the Florida Healthy Kids Corporation (FHKC), who contracts with a Third Party Administrator (TPA) to perform eligibility determination, account maintenance, and other functions. Maximus is the TPA. According to an audit published on March 31, 2016, FHKC assessed Maximus total liquidated damages of \$4,450,000 for the time period between October 2013 and December 2015. (Florida Healthy Kids Third Party Administrator Performance Standards Review, March 31, 2016, attached hereto as Exhibit B.)

The redaction of this information is prejudicial to AHS because AHS is not able, for protest purposes, to make its own evaluation of the responsiveness of Maximus’s proposal, or the responsibility of Maximus. It is evident that Maximus disclosed to the Evaluators some information regarding penalties and damages. Likewise, AHS is aware, through public sources, that Maximus has been subjected to at least one instance of the assessment of liquidated damages. AHS should be allowed to review the redacted information submitted by Maximus to compare it with the information known to AHS concerning penalties and damages assessed against Maximus. This is necessary so that AHS can make its own determination of the responsiveness of Maximus’s offer.

The Evaluators did not note in the Evaluation Summaries any information concerning penalties or damages assessed against Maximus in other matters. This either means that Maximus did not make a disclosure of this information, or that one or more of the Evaluators did not take this information into account in scoring for Qualifications. As discussed above in Issue 4, it is apparent that the Evaluators did not take into account any negative assessments or penalties levied against Maximus. If the Evaluators did not take this information into account, the intent to award to Maximus should be rescinded, and the award should be made to AHS.

In the alternative, and for the reasons stated herein, AHS respectfully requests that the award of this contract be suspended until such time as the redacted information is made available to AHS, and until AHS has been able to adequately and fairly review Maximus’s submission, and submit a protest based on full information. The award to Maximus would be unfair where AHS has not had a full and fair opportunity to review the entirety of Maximus’s submission. The process as a whole is unfair where aggrieved offerors are unable to properly evaluate the submissions made by winning bidders.

5. Based on the highly competitive nature of the two proposals submitted, ITMO should have sought best and final offers from Maximus and AHS.

AHS is withdrawing this issue from consideration by the Procurement Officer.

6. The ITMO failed to conduct a proper cost technical trade-off analysis.

The RFP states that award will be made “to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State.” This determination of “most advantageous to the State” requires a trade-off of cost versus technical. It does not appear that this tradeoff was made. Instead, the outcome suggests that price was the primary and dominant factor and that the award was given to the offeror with the lowest price. It does not appear that any tradeoff occurred to consider and identify the offer most advantageous to the state. If the proper consideration had been made, ITMO would have determined that AHS would have been the most advantageous.

Section 11-35-1530 requires that all responsive offerors be ranked from most advantageous to least advantageous to the State. Section 6.5 of the RFP states that “Once evaluation is complete, all responsive Offerors will be ranked from most advantageous to least advantageous.” It does not appear that the offerors were ranked based on the most advantageous proposal to the State. There is no evidence that ITMO did anything more than announce its intent to award the contract to Maximus after tallying the scores. This was error. The award is not to be made to simply the offeror with the highest score; an evaluation must be completed and then the offerors must be ranked from most advantageous to least advantageous.

7. The offer submitted by Maximus did not conform to the essential requirements of the RFP and/or improperly attempted to modify the RFP and impose conditions.

Based on the reasons set forth in Issues 2, 3, 4, and 6, AHS asserts that the offer submitted by Maximus did not conform to the essential requirements of the RFP and/or improperly attempted to modify the RFP and impose conditions.

8. The lower cost for implementation was improperly accounted for by the evaluators in the Technical criteria.

Based on a review of the Evaluation Summaries, all four Evaluators took into account the implementation time for Maximus under the criteria for Technical Response. Maximus proposed a shorter implementation period. A shorter implementation period is inherent as an incumbent, and is solely a cost advantage not a technical advantage, as regardless of the implementation timeframe, services will be provided by a qualified contractor at all times. ITMO specifically addressed the impact of implementation in the cost proposal. AHS as the non-incumbent vendor was required to adjust its cost to address a longer implementation phase. Evaluators should have been briefed by ITMO that the additional implementation time was addressed in the cost proposal and should not be considered in the technical evaluation. AHS was penalized twice for not being the incumbent. AHS was negatively penalized for not being the incumbent.

It was clear error for AHS to be doubly penalized for the implementation time. There was no logical and rational reason to award the incumbent points for the shorter implementation time in the

Technical Approach scoring and it was arbitrary and capricious to award points to Maximus for this reason.

9. The ITMO placed an unfair and improper emphasis on the cost of implementation, and penalized a non-incumbent vendor both by price and technical scoring.

The evaluation improperly penalized non-incumbent contractors. The State factored in the Total Cost of Ownership into the Cost Proposal, which penalizes non-incumbent contractors and rewards the incumbent contractor who require minimal, if any, implementation time. Further, all Evaluators recognized that the minimal implementation time required by Maximus was a reason behind their Technical Score. However, the Cost Proposal scoring already factored in the implementation benefits associated with incumbency and factoring it in twice unfairly benefits Maximus.

Conclusion

AHS respectfully requests that ITMO rescind its intent to award a contract to Maximus for this Solicitation and award the contract to AHS, after taking into account the errors in scoring and methodology as explained herein. While it is impossible to identify the exact magnitude correcting the scoring errors will have on the final numerical score, it is clear that correcting their impact is significantly more than the 0.37 required to correctly award the contract to AHS. The errors in scoring and methodology skewed the overall scoring and evaluation to the detriment of AHS.

Sincerely,



Peter M. Balthazor

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised November 2016)

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 111.1 of the 2016 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 473, 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.