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## Protest Decision

**Matter of:** Digital Innovation, Inc.

**Case No.:** 2018-214

**Posting Date:** June 11, 2018

**Contracting Entity:** SC Department of Health and Environmental Control

**Solicitation No.:** 5400014225

**Description:** Web Based Trauma Registry

### DIGEST

Protest of improper determination of non-responsiveness is granted. Digital Innovation's (DI) letter of protest is incorporated by reference. [Attachment 1]

### AUTHORITY

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

### BACKGROUND

Solicitation Issued	10/20/2017
Amendment One Issued	11/03/2017
Amendment Two Issued	11/07/2017
Intent to Award Issued	03/23/2018

Protest Received

03/29/2018

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids on behalf of the South Carolina Department of Health and Environmental Control (DHEC) to secure a Web Based Trauma Registry. The overall goal of this project is to replace the current registry software, which requires individual hospital subscriptions stored on local servers, with a web based option that will allow all hospitals to submit data at no cost to them. DI is the current provider of the state trauma registry.

This solicitation was conducted under Section 11-35-1520 of the Procurement Code, which provides that award will be made “to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids” unless there is a compelling reason to reject a bid. S.C. Code Ann. § 11-35-1520(10) (2011). Bids were received from the University of North Carolina at Chapel Hill (UNC), ImageTrend, Inc. (IT), and DI. DI’s bid was submitted in hardcopy and in the form of a response to a Request for Proposals rather than an Invitation for Bids. DI’s bid was determined to be non-responsive by the procurement officer based on “one or more” of fourteen enumerated issues.<sup>1</sup> [Attachment 2] DI protests the determination that its bid was non-responsive by addressing each of the fourteen issues of responsiveness.

## **ANALYSIS**

A responsive bidder is defined by Section 11-35-1410(7) as:

“Responsive bidder or offeror” means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

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<sup>1</sup> The Procurement Officer provided the CPO with the following comment concerning his determination:

On 2/13/18, DHEC provided me with the attached list of 43 items, compiled by DHEC subject matter expert(s), which assisted me (along with my own professional judgement) in determining Digital Innovation (the protesting party) to be Non-Responsive. On 2/20/18, DHEC subject matter experts completed their review of the ImageTrend (the awardee) bid. In consideration of their conclusion of Responsiveness, and based on my own professional judgement, I subsequently deemed ImageTrend to be Responsive.

DHEC’s list of concerns is included as Attachment 3 to this decision.

Section 11-35-1520(6) requires that “Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.” The Procurement Review Panel has consistently held that the responsiveness of a sealed bid must be determined at the time of bid opening solely from the four corners of the bid document. *Appeal by Greenville Office Supply*, Panel Case No. 2014-5 (September 10, 2014); *Appeal by Two State Construction Co.*, Panel Case No. 1996-2 (April 1, 1996).<sup>2</sup>

The first issue of non-responsiveness states:

1. The solicitation required a true web based system. This is not the solution proposed by Digital Innovation. The response states for local registry software in the second to last paragraph on Page 6. This is not pertinent or relevant to this request for bid, and is clearly stating they do not intend to provide the service we are requesting. These terms were vetted by stakeholders of SC and are required.

The solicitation requires:

Provide a web-based trauma registry that is available at no additional cost to all 64 South Carolina trauma facilities (DHEC will be responsible for all costs associated with this contract and must be included in the bidding scheduled).

(Solicitation, Page 15). DI’s bid response:

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<sup>2</sup> The choice to use competitive sealed bids as the source selection method is a curious one. While South Carolina’s procurement code expresses a clear preference for sealed bidding, it is most appropriate where the State’s requirements are explicit, or where the State is acquiring a commodity. Typically, complex or mission-critical software or hosted IT services are acquired using competitive sealed proposals as provided for in S.C. Code Ann. § 11-35-1530. Among other things, competitive sealed proposals allow evaluation of how well an offeror’s proposed solution addresses the State’s requirements. In competitive sealed bidding, though, the bidder is generally bound to provide the product or service described in the solicitation. If she qualifies her bid or otherwise indicates that she will not provide the State’s requirements, her bid is non-responsive. Absent such a qualification expressed in the bid, though, her bid will be responsive.

Using sealed bidding invited the issues in this protest. DI’s bid includes pages of narrative describing how its solution will best meet DHEC’s requirements. In this respect it looks more like a response to a Request for Proposals than a bid. It is sometimes said that an invitation for bids asks only for a price and a signature. If DI had responded without reservation or elaboration of its service, there would have been no opportunity to parse its proposal. Only price would have been evaluated and, assuming DI to be a responsible offeror, its low bid would have won the contract. DHEC’s list of forty-three “Concerns regarding DI bid” [Attachment 3] are perfectly appropriate considerations for an evaluator to take into accounting when scoring a proposal. This solicitation notified offerors that award would be based on price alone, and that the low bid would “be calculated as the total cost to the State for the proposed solution for the maximum potential contract term.” [Solicitation p. 20] The bid form identified the pricing each bidder was expected to provide. [Solicitation p. 37] There should have been no reason for DHEC to “evaluate” anything other than the total bid price.

Digital Innovation Response: DI is providing a web-based trauma registry system that provides central site data aggregation as well as acute care hospital data entry. The acute care data entry system will be based on the minimum data set to mirror the NTDB and TQIP data points as defined by SC DHEC in conjunction with the Trauma Association of South Carolina and the South Carolina Trauma Advisory Committee. Additionally, the data set will include the approximately 20 data fields that are currently being collected by the State of South Carolina in the existing DI solution. The data collection form will also allow for User-defined data points to be configured for inclusion.

(DI Bid, Page 1). DI's response<sup>3</sup> to the determination of non-responsiveness:

Digital Innovation Response: Page 6 of our RFP response is an informational section where our CEO provided a note to explain how DI's solution would be able to support any local registry solutions and enable their data to be integrated into DI's web-based trauma registry solution. Not only is this information pertinent and relevant, the ability to support this functionality is explicitly mentioned and required in the South Carolina solicitation. On page 15 of the RFP, under the section of **MATERIAL REQUIREMENTS – SPECIFICATIONS**, the second noted point documents the following:

“Work with other trauma registry providers to ensure current and accurate transfer of data if a trauma center chooses not to use the registry provided by SC DHEC.”

Therefore, based on this formal request and requirement of the RFP, DI submits that our proposed system is indeed a true web based system and meets the requirements of the RFP including the requirement to support local trauma registry systems as noted in the page 15 reference. Moreover, we have spoken directly with trauma registry stakeholders in SC as well and they noted that the requirement noted above is needed, desired and MANDATORY. Moreover, the State's selected solution, would entail potentially other additional costs for those SC stakeholders that require or desire maintenance of their existing local solutions. In short, DI's proposal not only meets the requirements of the RFP for a web-based system, but provides additional capabilities to benefits to key SC stakeholders who may need to interact with the web-based system in EXACTLY the manner contemplated and requested in the RFP. This Statement #1 by the State is a shameful and obvious mischaracterization of DI's RFP response, that was fabricated to construe an unwarranted disqualification of DI's bid after it was evident DI would be the low bidder.

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<sup>3</sup> DI presented its protest as “in-line” comments to the procurement officer's written determination. DI's text is blue in the protest document. The font color is reproduced in the text as it appears on Attachment 1.

The solicitation required a “web-based trauma registry.” Although DI’s proposal explained how it would support local-registry solutions, it proposed a “web-based trauma registry system.” (DI Bid, Page 10). The solicitation did not define a “true web-based system” or prohibit a system that provided both web-based and on premise alternatives. DI was responsive to this requirement. This issue of protest is affirmed.

The second issue of non-responsiveness states:

2. On Page 5 of DI’s bid, in the CEO note, stresses the need for local software, contrary to the solicitation requirements. This section and the “Local Software Values Factors” proves DI’s proposed solution is non-responsive to the solicitation requirements.

Page 5 of DI’s bid states that “[t]here’s a variety of local trauma registry software in place throughout SC that provides substantial value above and beyond what can readily be provided by a state system and/or that hold unique, special, or important functionality for given facilities.”

In its protest, DI responded:

Digital Innovation Response: Page 5 of our RFP response is an informational section as noted above. The HCA-based trauma centers in your state have many HCA-specific requirements that were not covered by your RFP requirements and therefore, we noted – for informational purposes only – that these centers along with most of the major trauma centers in your state (which currently make up 70 to 80% of all of SC’s collected trauma data) would not likely be moving to the proposed web-based system. Again, your requirements as noted on page 15 of the RFP (and noted above), require the new system to be able to handle the submission of data from other trauma registry systems (other than the web-based system being proposed). I submit that responding to a mandatory requirement of the RFP cannot make us non-responsive. Frankly, it is unbelievable this point even has to be made, and we would like to understand the review process of the State’s memorandum, and the authors of the State’s memorandum intent on allowing and crafting an improper disqualification of our bid.

The solicitation stated that the system must be a web-based system. Although DI’s bid noted that its web-based system could integrate with local software solutions, “DI’s solution is web-based and only requires users to have Internet access via common/standard browsers.” (DI Bid, Page 14). The solicitation did not prohibit a system that provided support for local software in addition

to the web-based system. DI was responsive to the solicitation in this regard. This issue of protest is affirmed.

The third issue of non-responsiveness states:

3. The web-based central site option referred to by DI on Page 7 is not truly web based and requires installation on a local server which is contrary to the solicitation requirements.

On page 7 of its bid DI stated :

The DI Central Site Solution (DCSS) is a powerful, user-friendly and proven web-based registry solution, which delivers industry leading product features like:

- Statewide Systems features – Our product is the only solution that includes a true central site data collection tool, complete with the ability to maintain a comprehensive or abbreviated (state mandated) data set.
- Integrated Report Writer – DI’s market leading position is based on our ability to “make the gathered data useful”. Many systems collect data. But the DI Central Site Solution and our nearly 30 years of trauma experience, allows users of all technical levels to “get the data out” as well as manipulate and formulate the data into meaningful reports.
- Data Validation – DI, the operational partner with the American College of Surgeons for their National Trauma Data Bank (NTDB) from 2004 to 2017, has built Data Validation tools for the NTDB that have **ALREADY** been configured to the existing SCDHEC data requirements. Therefore, a SCDHEC Data Validator is available “out of the box” and the validator will eliminate the requirement of state resources having to reformat data to enable data collection, aggregation and benchmarking.
- Expandability – The DI Central Site is just a small part of a large family of medical registry products and solutions, including solutions that span the continuum of care.

The DI Central Site supports a variety of powerful benchmarking, analysis, and utilization functions; as well as a sophisticated data management approach. The DI Central Site system, as implemented for South Carolina, will manage the accumulation and preparation of data in a powerful database, as well as provide user-friendly reporting and analysis capabilities for SCDHEC’s personnel and stakeholders to use.

Although the Procurement Officer determined that DI failed to offer a system that was “truly” web based, DI’s proposal states that its “solution is web-based and only requires users to have Internet access via common/standard browsers.” (DI Bid, Page 14). The solicitation required no more. Further, nothing in DI’s bid, on page 7 or elsewhere, requires installation on a local server. DI’s bid was responsive in this regard. This issue of protest is affirmed.

The fourth issue of non-responsiveness states:

4. On page 35 of DI’s bid - Data collection/Entry- DI’s solutions requires local subscriptions. States to be uploaded via web portal, contrary to solicitation requirements.

Page 35 of DI’s bid states:

#### **Data Collection/Data Entry**

Data Collection and Data Entry is supported by the Web-based DI Trauma Registry as well as Local Trauma Registry solutions. These solutions provide user-friendly capabilities for securely entering, reviewing, validating, and submitting trauma registry data to the central site databases.

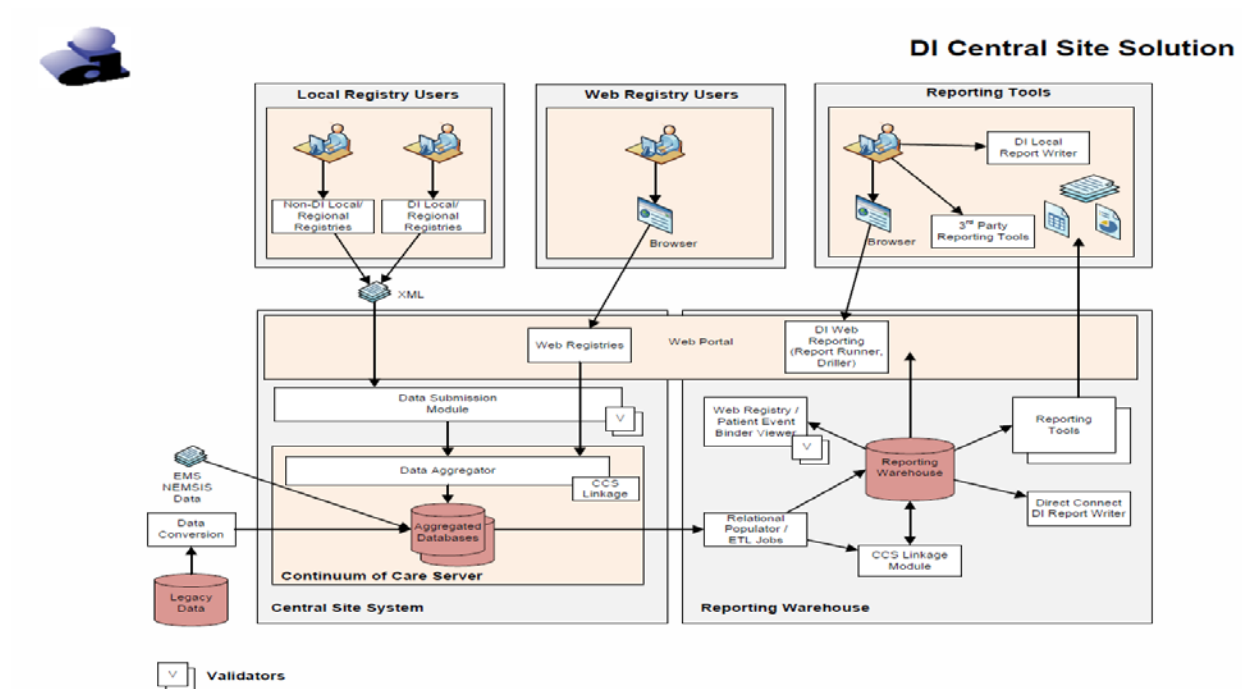
The end result of the data collection process is, of course, to build a central repository. This repository is depicted in our diagram under the label “Production Database.” The production database contains a collection of all trauma registry incidents directly entered into the Web Data Entry or uploaded via our Web Portal. This information is stored in an enterprise-class DBMS — and will be Microsoft SQL for this deployment per the State’s specification.

DI’s bid did not require local subscriptions for data collection and entry. Page 37 of DI’s bid states that “Data Collection and Data Entry is supported by the Web-based DI Trauma Registry *as well as* Local Trauma Registry Solutions.” (DI Bid, Page 35) (emphasis added). The solicitation did not prohibit a system that could accept data from both the required web-based system and other systems. There is nothing in DI’s response to indicate that there will be a subscription fee for use of its web-based solution. This issue of protest is granted.

The fifth issue of non-responsiveness states:

5. The data flow and descriptions on page 33 number 2 indicate this is not a true web based system, rather a way to “shuffle” data from one place to the other.

The data flow on page 33 of DI's bid is shown below:



Page 33 of DI's bid states:

2. Web Portal – is the web-based framework to support the major functions of the Central Site Trauma Registry. The Web Portal is designed as a “chassis” that interfaces with the Central site system. The Web Portal serves as both an “upload” and “output” point for the system. This component delivers content such as reports, like the graphical Data Driller®, and provides the ability to enter data through a web client. The Web portal also hosts the XML-based web services that enable remote users with other systems to upload data through the Central Site Trauma Registry to the Production database, as well as facilitate pre-hospital data linkage and inter-facility data linkage (optional)

Nothing in the data flow or description on Page 33 of DI's bid indicates anything more than a dual-function system supporting local trauma registry users as well as web-registry users. The solicitation did not prohibit a dual function system. DI bid a web-based system in compliance with the solicitation requirements. This issue of protest is granted.

The sixth issue of non-responsiveness states:



6. On page 23 of DI's bid (Product Support) second bullet- On-site installation conflicts directly with the bid. Is to be a strictly web based system with no local download.

DI's bid response states:

#### Product Support Services

Strong support services are essential to the long-term success of a trauma registry program. DI is committed to providing exceptional technical and project support services for end-users of our database management systems and applications. DI offers a full suite of maintenance, development, and support services for our trauma registry, including:

- Software Help Desk
- On-Site Installation
- Training
- Systems Interfacing & Integration Consulting
- Custom Application Development
- Data Migration Services
- Application Maintenance
- Data Set Design and Review
- Reports Design and Definition
- Application Hosting
- Data Center Services

Here, the Product Support Services lists a number of services, including "On Site Installation," but those services are located within DI's section on corporate capabilities. The fact that DI has capabilities beyond what is requested does not conflict with DI's web-based system, which it agreed to provide. The solicitation set forth the minimum requirements but did not prohibit a bidder from offering additional functionality or services. The language in DI's bid response does not support the conclusion that DI is bidding anything other than the required web-based system. This issue of protest is granted.

The seventh issue of non-responsiveness states:

7. Page 31 notes 4 of the DI response imposes terms contrary to solicitation requirements. Current and legacy systems are independent of this project as we are soliciting for a new Web Based Trauma Registry.

The note on page 31 of DI's bid states:

4. Related to annual support fees, DI will provide support to the legacy State system as well as the new system if all outstanding maintenance fees have been paid by the State to DI and payments for the annual hosting and support fees are paid annually in advance.

This statement refers to the support contract for the legacy system and imposes no conditions on the current bid or resultant contract. This does not create a responsiveness issue with regard to this bid. This issue of protest is granted.

The eighth issue of non-responsiveness states:

8. According DHEC subject matter experts, DI's claim that the system will eliminate submission and data validation is false. This must still be done at the state level to ensure appropriate mapping. DHEC has had issues with "validating" submission data, and have been working since May 2016 to correct these issues. This is still not solved to ensure we are receiving accurate data which makes it a high priority and a solicitation requirement.

Here, DI's bid stated that it "provides a 'CHECK' button within the registry to validate data."

(DI Bid, Page 13). On its face, this complies with the requirements to validate the data.

Responsiveness must be determined at the time of bid opening solely from the four corners of the bid document. Evaluation based on information outside the four corners of the bid is inappropriate. S.C. Code Ann. § 11-35-1520(6). This issue of protest is granted.

The ninth issue of non-responsiveness states:

9. Page 9 of DI's bid, under the data proposition, DI implies that TriCode is included. However, page 10 of DI's bid (and in multiple other places in DI's bid) lists TriCode as an option. We did not ask for options and cannot determine the Total Cost of Ownership.

Page 9 of DI's bid states:

### **The DI Value Proposition**

Throughout our long history, DI and our solutions have preserved our clients' investments in data, systems, reports, queries, configuration, and training — providing lasting and cost-effective trauma registry solutions to our users. DI has provided these proven and lasting capabilities to the "State" over the past decade and the upgrade to our latest technology will be cost effective and will allow for South Carolina users to continue to enjoy DI's technical support that your users

have rated as “outstanding”. DI’s knowledge of the SCDHEC environment, coupled with our unique and powerful software tools, like Data Driller® and TriCode TM will provide SCDHEC and their stakeholders with an unparalleled trauma registry experience. DI has enjoyed our long partnership with SCDHEC and we look forward to continuing as South Carolina’s long-term business partner.

Page 10 of the bid continues:

*Note: Optionally, DI can offer its unique text-to-code solution — TriCode — for the web-based data entry users, if desired. Since automated coding was not a requirement of this RFP solicitation, the feature has not been included. However, DI believes that better coding results and data collection accuracy would be greatly improved by leveraging this automated tool.*

(emphasis in original)

DI clearly stated on page 10 of its bid that: “*Since automated coding was not a requirement of this RFP solicitation, the feature has not been included.*” DI’s bid should not have been disqualified for a purported inability to “determine the Total Cost of Ownership.” This issue of protest is granted.

The tenth issue of non-responsiveness states:

10. On page 12, number 11 and 12 state these modules are available for all registered participants. It does not clearly state that it is included in the price and therefore the Total Cost of Ownership cannot be determined.

Page 12 of DI’s bid includes:

11. Include NTDB submission module

Digital Innovation Response: The DI NTDB submission module is available for all NTDB participants.

12. Include TQIP submission module

Digital Innovation Response: The DI TQIP submission module is available for all registered ACS TQIP participants. Note: The ACS requires a fee in order to participants to submit data. The individual hospitals are responsible for all fees related to TQIP participation.

DI clearly stated that the NTDB and TQIP submission modules were available. There is nothing in DI's response to indicate that this functionality was not included in its bid. All it does is confirm that third-party charges for access is outside the scope of the IFB—a fact DHEC acknowledged in its next "concern," *post*. If there was some question about the inclusion of these capabilities, that ambiguity could have been clarified under Section 11-35-520(8). There is nothing to support a finding that the total cost to the state could not be determined. This issue of protest is granted.

The eleventh issue of non-responsiveness states:

11. On page 12, number 13 of DI's bid, DI states hospitals are responsible for ALL FEES RELATED TO TQIP PARTICIPATION. While the facilities are responsible for the cost to the ACS, the submission to TQIP is to be included in their response and does not appear to be. The same is true with NTDB. Therefore, the Total Cost of Ownership cannot be determined.

The finding of non-responsiveness references solicitation requirement 13, which has nothing to do with the subject matter of the issue. The CPO assumes the reference should be to solicitation requirement 12 as stated below with DI's response:

12. Include TQIP submission module

Digital Innovation Response: The DI TQIP submission module is available for all registered ACS TQIP participants. Note: The ACS requires a fee in order to participants to submit data. The individual hospitals are responsible for all fees related to TQIP participation.

There is nothing in DI's response to indicate that the fees for TQIP are not included in DI's bid. There is nothing to support a finding that the total cost to the state could not be determined. This issue of protest is granted.

The twelfth issue of non-responsiveness states:

12 On page 12 number 14 of DI's bid - Costs related to HL7 have not been included. Inclusion is requirement of the solicitation. Therefore, the Total Cost of Ownership cannot be determined.

Amendment 1 states:

13. The requirements discuss HL7 and EMR integration requirements. What method is envisioned for Hospital EMR's to "connect" to this web system? It seems highly unlikely each hospital network would allow a cloud system to "reach in" and pull data from their network? It would require some type of "push software" in a hospital to avoid a pull. In either event there would be significant firewall issues and requirements. More details are required to provide a response to this requirement.

This criteria has been included at the recommendation of the stakeholders in South Carolina to allow for possible expansion and collaboration. The "connection" would be determined by each individual facility. It is not required for facilities to participate in any data exchange, however, if they choose to do so, the registry vendor shall have the capability to "push" or "pull" data based on established agreements between the hospital, EMR provider, and state registry provider. The state is not responsible for any facility level firewall or network options that may be necessary.

20. Who is the State's EMR Vendor? Is it uniform for all hospitals? If not, do all EMR vendors utilize the same HL7 formats? Which HL7 formats are required/desired?

The State does not have an EMR provider for hospitals or trauma centers. There is no universal provider in SC. EMS database is supported by the EMS Performance Improvement Center. No change in HL7 terminology as this refers to a general format. All must be able to be accepted.

DI's bid response:

14. Patient and clinical data is downloaded from an EMR vendor to registry using HL7.

Digital Innovation Response: DI provides an HL7 receiving module to allow data from EMR systems to be imported into the trauma registry system to eliminate duplicate data entry.

Note: Costs related to HL7 data collection and data import have not been incorporated in DI's bid response since South Carolina documented in Amendment #1 that criteria related to HL7 and EMR integration are requested only for possible future expansion. DI can provide HL7 interfaces as well as automated data imports from HL7 messages into the web-based trauma registry. Additionally, local users of our hospital-based system have successfully utilized this functionality and capability for years.

The solicitation stated that the Offeror must be able to provide capability for patient and clinical data to be downloaded from an EMR vendor to the registry using HL7. DI's bid indicated that it has an HL7 receiving module to allow data from EMR systems using HL7.<sup>4</sup> The State indicated that the "connection" between the EMR and registry vendor would be determined by each individual facility; that facilities are not required to participate in any data exchange; and that, if they choose to do so, the registry vendor should have the capability to "push" or "pull" data based on established agreements between the hospital, EMR provider, and state registry provider. DI noted that with all these variables, it was not possible to include a firm fixed price for these interfaces. The solicitation requirement was that the bidders have the ability to receive data using HL7 formats. DI indicated that it had that ability. DI was responsive that this requirement. This issue of protest is granted.

The thirteenth issue of non-responsiveness states:

13. One page 18 number 61 of DI's bid- 24/7 support (solicitation requirement) cannot be provided per DI's response.

DI's bid response:

61. 24/7 technical support and online chat support

Digital Innovation Response: DI provides 24/7 technical support and provides on-line chat support for clients utilizing and registering to use the DI Support Portal. DI has priced 24 X 7 system monitoring and technical support and is providing application support from 8:30 AM to 5:00 PM Monday through Friday.

The definition of technical support varies from vendor to vendor. The solicitation did not define technical support, so the State is left with the vendor's definition of technical support. The solicitation required technical support 24/7. DI included 24/7 technical support and online chat support, as it defines it, and is responsive to this requirement.<sup>5</sup> This issue of protest is granted.

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<sup>4</sup> ImageTrend's Bid, which the procurement officer found responsive, answered question #14 by stating, "Yes, Patient Registry has an *optional* integration that connects a hospital's EMR with the Patient Registry in an HL7 file format." (emphasis added)

<sup>5</sup> ImageTrend's Bid merely states that its support system "incorporates around-the-clock reporting of all submitted tickets," without indicating whether reporting is 24/7—such as being able to send an email requesting help at 1am—or whether actual support is provided 24/7.

The next issue of non-responsiveness states:

14 Page 31 notes 4- this imposes different terms as outlined by DI. Current and legacy systems are independent of this project as the State is soliciting for a new Web Based Trauma Registry.

DI's bid response:

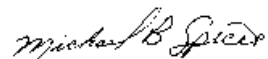
4. Related to annual support fees, DI will provide support to the legacy State system as well as the new system if all outstanding maintenance fees have been paid by the State to DI and payments for the annual hosting and support fees are paid annually in advance.

This is a duplication of non-responsiveness issue #7 above. For the same reasons discussed there, this issue of protest is granted.

## **DECISION**

For the reasons stated above, the protest of Digital Innovation, Inc. is granted. The award to ImageTrend, Inc. is cancelled and the procurement is remanded to the Information Technology Management Office for processing in accordance with the Consolidated Procurement Code.

For the Information Technology Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**From:** [Tim Favazza](#)  
**To:** [itmo\\_protest](#)  
**Cc:** [Dalton, Michael](#)  
**Subject:** Protest of Award -- Solicitation: 5400014425  
**Date:** Thursday, March 29, 2018 11:53:12 AM  
**Attachments:** [SC Protest -- DI Response Final.docx](#)

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Digital Innovation, Inc. (DI) would like to formally protest the award of Solicitation 5400014425. The RFP clearly denoted that the award would be made on the grounds of lowest responsive bidder and DI was clearly the lowest bidder by more than \$400,000. Attached is South Carolina's Memorandum for Record, which outlines 14 points that the State of South Carolina has documented for our firm. These 14 points were documented to make the case that DI's bid was "non-responsive", however, a review of these points will clearly show that DI's bid was complete, thorough and fully responsive.

DI has provided a formal response to each and every point (within the attached document) to show the "responsiveness" of our bid. DI has even reviewed the "awarded" vendor's bid and provided extracted excerpts to show that similar responses were "interpreted" quite differently for DI than the selected vendor.

DI takes exception to each and every point and has outlined our formal response(s) to each point. We trust that the taxpaying citizens of South Carolina desire the most cost effective solution available and ask for a formal review of our protest. We trust that SC State Procurement's desire is to have fair and unbiased competitive bid processes and therefore, request your formal review of our protest.

Please confirm receipt of our protest.

Respectfully,

Tim Favazza  
Director, Sales & Service  
Digital Innovation, Inc.  
800-344-3668 X234  
410-322-0664 (cell)



# Memorandum for Record

**Determination of Non-Responsive Proposal**  
**Solicitation # 5400014425**  
**State Trauma Registry**  
**SC Department of Health and Environmental Control**

Digital Innovation Executive Overview:

Digital Innovation, Inc. (DI) is protesting the award by procurement for the above-mentioned solicitation. DI's bid was erroneously identified as being non-responsive. All 14 references below cited by the State entail mischaracterizations of DI's response. In many cases, DI was presenting available additional capabilities. These responses were purposely taken out of context to help establish what we believe was an obvious desire on the part of individual State personnel to exclude DI's bid from a fair competitive process. It is particularly troubling that the State would award a contract several hundred thousand dollars higher than our bid, without even make attempts at any clarifying questions. During the bid process, vendors asked 30 clarifying questions. But SC DHEC, despite a \$400,000 price difference, did not feel compelled to ask one clarifying question. This appears to speak to an agenda to preclude DI's response, and this improper exclusion is counter to a fair procurement process, and counter to serving the best interests of the tax paying citizens of South Carolina. The process is disturbing to say the least, and requires a proper rebid, and warrants a very careful look at the persons, processes, propriety, and circumstances involved in the vetting process, as well as any potential improper coordination. Ironically, after a review of ImageTrend's bid, many similar responses were made in their response that were readily accepted, but weren't noted as non-responsive, when DI made a similar comment and these will be highlighted below. Amazingly, one of ImageTrend's reference accounts is the State of Mississippi. It is interesting that the bid called for trauma references and Mississippi is, in fact, a trauma registry client of Digital Innovation. Moreover, ImageTrend and DI went head-to-head earlier this year on a "web-based trauma registry system" and DI won that fair and competitive bid process.

Digital Innovation will demonstrate below that not only were we the lowest bidder, that our bid was complete and responsive as well and believe a review of the facts will show that this contract should be awarded to us.

Pursuant to SC Code of Laws, State Regulations and clauses and Solicitation 5400014678 referenced herein, the bid submitted by Digital Innovation (DI) is determined to be non-responsive to the solicitation, in accordance with SC Code §11-35-1410(7). The non-responsive determination is based one or more of the following:

1. The solicitation required a true web based system. This is not the solution proposed by Digital Innovation. The response states for local registry software in the second to last paragraph on Page 6. This is not pertinent or relevant to this request for bid, and is clearly stating they do not intend to provide the service we are requesting. These terms were vetted by stakeholders of SC and are required.

Digital Innovation Response: Page 6 of our RFP response is an informational section where our CEO provided a note to explain how DI's solution would be able to support any local registry solutions and enable their data to be integrated into DI's web-based trauma registry solution. Not only is this information pertinent and relevant, the ability to support this functionality is explicitly mentioned and required in the South Carolina solicitation. On page 15 of the RFP, under the section of **MATERIAL REQUIREMENTS – SPECIFICATIONS**, the second noted point documents the following:

"Work with other trauma registry providers to ensure current and accurate transfer of data if a trauma center chooses not to use the registry provided by SC DHEC."

Therefore, based on this formal request and requirement of the RFP, DI submits that our proposed system in indeed a true web based system and meets the requirements of the RFP including the requirement to support local trauma registry systems as noted in the page 15 reference. Moreover, we have spoken directly with trauma registry stakeholders in SC as well and they noted that the requirement noted above is needed, desired and MANDATORY. Moreover, the State's selected solution, would entail potentially other additional costs for those SC stakeholders that require or desire maintenance of their existing local solutions. In short, DI's proposal not only meets the requirements of the RFP for a web-based system, but provides additional capabilities to benefits to key SC stakeholders who may need to interact with the web-based system in EXACTLY the manner contemplated and requested in the RFP. This Statement #1 by the State is a shameful and obvious mischaracterization of DI's RFP response, that was fabricated to construe an unwarranted disqualification of DI's bid after it was evident DI would be the low bidder.

2. On Page 5 of DI's bid, in the CEO note, stresses the need for local software, contrary to the solicitation requirements. This section and the "Local Software Values Factors" proves DI's proposed solution is non-responsive to the solicitation requirements.

Digital Innovation Response: Page 5 of our RFP response is an informational section as noted above. The HCA-based trauma centers in your state have many HCA-specific requirements that were not covered by your RFP requirements and therefore, we noted – for informational purposes only – that these centers along with most of the major trauma centers in your state (which currently make up 70 to 80% of all of SC's collected trauma data) would not likely be moving to the proposed web-based system. Again, your requirements as noted on page 15 of the RFP (and noted above), require the new system to be able to handle the submission of data from other trauma registry systems (other than the web-based system being proposed). I submit that responding to a mandatory requirement of the RFP cannot make us non-responsive. Frankly, it is unbelievable this point even has to be made, and we would like to understand the review process of the State's memorandum, and the authors of the State's memorandum intent on allowing and crafting an improper disqualification of our bid.

3. The web-based central site option referred to by DI on Page 7 is not truly web based and requires installation on a local server which is contrary to the solicitation requirements.

Digital Innovation Response: Page 7 of the RFP response states the following:

The DI Central Site Solution (DCSS) is a powerful, user-friendly and proven web-based registry solution, which delivers industry leading product features like:

- Statewide Systems features – Our product is the only solution that includes a true central site data collection tool, complete with the ability to maintain a comprehensive or abbreviated (state mandated) data set.
- Integrated Report Writer – DI's market leading position is based on our ability to "make the gathered data useful". Many systems collect data. But the DI Central Site Solution and our nearly 30 years of trauma experience, allows users of all technical levels to "get the data out" as well as manipulate and formulate the data into meaningful reports.
- Data Validation – DI, the operational partner with the American College of Surgeons for their National Trauma Data Bank (NTDB) from 2004 to 2017, has built Data Validation tools for the NTDB that have ALREADY been configured to the existing SCDHEC data requirements. Therefore, a SCDHEC Data Validator is available "out of the box" and the validator will eliminate the requirement of state resources having to reformat data to enable data collection, aggregation and benchmarking.
- Expandability – The DI Central Site is just a small part of a large family of medical registry products and solutions, including solutions that span the continuum of care.

The DI Central Site supports a variety of powerful benchmarking, analysis, and utilization functions; as well as a sophisticated data management approach. The DI Central Site system, as implemented for South Carolina, will manage the accumulation and preparation of data in a powerful database, as well as provide user-friendly reporting and analysis capabilities for SCDHEC's personnel and stakeholders to use.

Nothing in this write-up refers to the local installation of software for DI's web-based trauma registry system and in fact, the word "local" is simply not on page 7 of DI's RFP response.

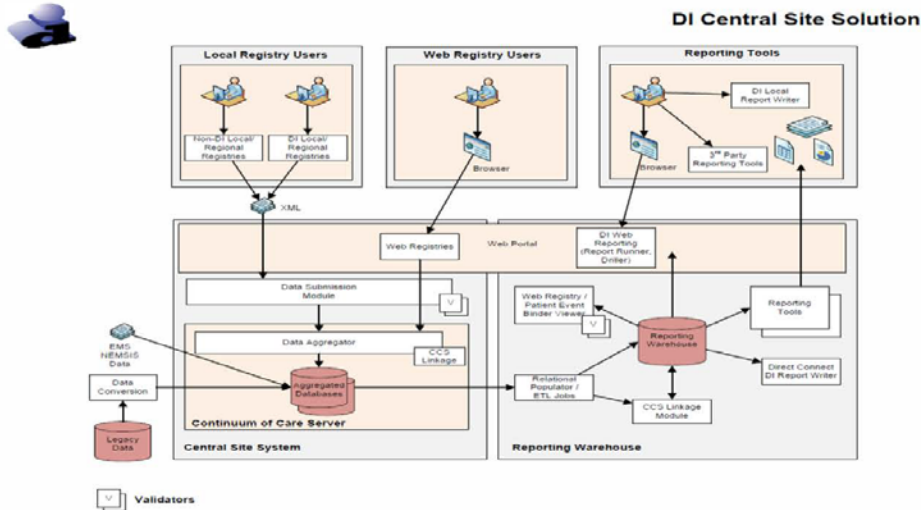
4. On page 35 of DI's bid - Data collection/Entry- DI's solutions requires local subscriptions. States to be uploaded via web portal, contrary to solicitation requirements.

Digital Innovation Response: Once again, there is no documentation on page 35 that says the DI system requires local subscriptions. Once again, the section being referred to, which was Section VII of our bid response, is an informational section that documents that both our web-based and local windows-based solutions collect and gather all the required data. However, there is no documentation related to our system requiring local subscriptions. Again, your RFP requirements document that the proposed system must – "Work with other trauma registry providers to ensure current and accurate transfer of data if a trauma center chooses not to use the registry provided by SC DHEC" and our response clearly indicates that we understood and satisfied that requirement. This is a matter that WILL and MUST be clarified with the SC trauma center stakeholders who, like the State, are well aware that an upload solution must

be supported for centers that require. How anyone reading or evaluating this RFP could see the support of this REQUESTED requirements as grounds for disqualification is beyond comprehension.

- The data flow and descriptions on page 33 number 2 indicate this is not a true web based system, rather a way to “shuffle” data from one place to the other.

Digital Innovation Response: Attached below is a copy of the data flow document that was provided on page 33.



Clearly this document shows that the system can support local trauma registry users as well as web-registry users. As is pictorially represented, web-based data entry and web-based reporting clearly shows that users must use a web browser to access the hosted web registry and web-based reporting tools. This data flow document clearly shows that the system is web-based and remotely accessed by the users of the system.

- On page 23 of DI’s bid (Product Support) second bullet- On-site installation conflicts directly with the bid. Is to be a strictly web based system with no local download.

Digital Innovation Response: Page 23 is within our corporate capabilities section. One of DI’s corporate capabilities includes on-site training and on-site installation, if applicable. Additionally, DI has the corporate capability to implement EMS data collection solutions. The fact that we have more corporate capabilities than your RFP requires is not a valid reason to dismiss DI. At no place in the RFP, related to the costs for the solution, does DI reference the need for on-site installation. Moreover, DI’s hosting site is a “site” and therefore, DI will be providing “on-site” installation and configurations services at our site, but that site is not a SC DHEC site and no one from DI will be implementing any software at any location other than our own web hosting facility.

- Page 31 notes 4 of the DI response imposes terms contrary to solicitation requirements. Current and legacy systems are independent of this project as we are soliciting for a new Web Based Trauma Registry.

Digital Innovation Response: Note 4 on page 31 was provided as a client option. As the existing vendor for the State of South Carolina (SC), SC has acknowledged their financial obligations for past due invoices and moreover, since DI had a 15-year history of annual maintenance payments, we simply offered to provide additional “out of scope” services to aid in the transition between legacy system and the new system. These extra services are not required and this option was presented as a client option. Moreover, in the SC solicitation, discounts for prompt payments were requested. Therefore, these additional “unpaid” services are part of DI’s discount related to prompt payment and therefore, fall completely within the boundary of the existing terms of the solicitation. Starting on Page 22 of the SC solicitation, the document denotes the following:

**DISCOUNT FOR PROMPT PAYMENT (JAN 2006)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

Therefore, while DI is not able to receive “credit” for providing a discount for prompt payment, we are allowed by the RFP to respond with our discount offers. Again, it is disturbing that providing an answer to a direct question could be cited by State Trauma leadership as a reason for disqualification.

8. According DHEC subject matter experts, DI’s claim that the system will eliminate submission and data validation is false. This must still be done at the state level to ensure appropriate mapping. DHEC has had issues with “validating” submission data, and have been working since May 2016 to correct these issues. This is still not solved to ensure we are receiving accurate data which makes it a high priority and a solicitation requirement.

Digital Innovation Response: Ironically, the comment noted in #7 above says that the legacy system and the system being bid in this RFP response are independent projects and considered separately. However, the untrained product “experts” who have never seen our web-based trauma registry system felt compelled sight, unseen to comment on the validity any statement within our bid response. First, DI wholeheartedly rejects the comments of any proposed “subject matter expert” since no one from SC DHEC has been available for free training offered over the past 5 years. Moreover, in direct discussions with CDM and Lancet, two previous trauma registry vendors within the State of SC, they have been able to successfully import data using the existing tools without issue. Most concerning, ironic, and disturbing, the vendor that SC has considered awarding the new web registry product to is the only vendor that has been unable to import data into the existing registry from their ONE SC trauma center (hospital) site.

More to the point, the existing system is based on legacy technology and is implemented in a distributed data collection model. However, the new requirements call for a single instance piece of software that collects data in a single repository. Therefore, if all users implement that single system then all data validation will be done within that system and moreover, no data need to be submitted. Therefore, DI stands by its statement and is fully prepared to demonstrate – not only in the new system, but in the legacy system, that SC can integrate data from all systems that are following the industry conventions and standards provided for such integration. Instead of “throwing the baby out with the bath water”, SC DHEC should have been exerting compliance pressure on ImageTrend to comply with the published integration standards instead of rewarding a non-compliance vendor with a statewide award.

9. Page 9 of DI’s bid, under the data proposition, DI implies that TriCode is included. However, page 10 of DI’s bid (and in multiple other places in DI’s bid) lists TriCode as an option. We did not ask for options and cannot determine the Total Cost of Ownership.

Digital Innovation Response: Page 9 of DI’s Bid Response denotes DI’s value proposition. Within our value proposition, we denoted two unique products. These products were TriCode and DI Data Driller®. However, your RFP did not request or require the automated text-to-code capabilities provided by TriCode and therefore, TriCode was not quoted. Since TriCode was not a SC requirement, there was no requirement to provide pricing for this optional and not required feature. For the purposes of our bid, we did not quote non-essential or non-requested services to artificially inflate our prices. Therefore, TriCode is not required and not needed to determine the total cost of ownership. If after reading the bid, SC is interested in changing its requirements to include our unique Tricode’s text-to-code functionality, Pricing could be provided or SC could revise its requirements during a proper bidding process. But how a State procurement process could allow disbarment of a proposal based on the mere mention of available compatible optional software is as confusing as it is concerning, but nonetheless in no way can justify the State’s position to exclude DI’s responsive bid.

10. On page 12, number 11 and 12 state these modules are available for all registered participants. It does not clearly state that it is included in the price and therefore the Total Cost of Ownership cannot be determined.

Digital Innovation Response: Page 12 of Bid Response is a part of the **MATERIAL REQUIREMENTS – SPECIFICATIONS** section. Our interpretation of this section is these requirements are mandatory and are required as part of the bid without exception. Therefore, DI noted in number 11 and 12, that all trauma centers that were registered to participate with the ACS’s TQIP initiative would be provided with this application. Your question is does the system include the TQIP submission module and the answer is yes, it is available and should be used by those centers that have been approved as registered participants by the ACS. Therefore, as we noted, the module is available but should only be used by ACS approved and registered participants. Therefore, our bid clearly shows that the module is available and is included within the price. Therefore, there is no extra costs related to the module that we documented in our bid response as included, so the Total Cost of Ownership was provided.

11. On page 12, number 13 of DI's bid, DI states hospitals are responsible for ALL FEES RELATED TO TQIP PARTICIPATION. While the facilities are responsible for the cost to the ACS, the submission to TQIP is to be included in their response and does not appear to be. The same is true with NTDB. Therefore, the Total Cost of Ownership cannot be determined.

Digital Innovation Response: As noted above, the NTDB and TQIP modules were documented as mandatory requirements and the cost of our proposal covered all mandatorily required features and submission utilities. DI noted that these modules were available. In the case of NTDB, the module is available for all NTDB participants (which requires no advance registration with the ACS) and TQIP (which requires advance registration and a signed contract with the ACS) for all register TQIP participants. Both modules were stated as included and no pricing exception for these two included modules was noted. Therefore, there is no extra costs related to the module that we documented in our bid response as included, so the Total Cost of Ownership was provided.

12. On page 12 number 14 of DI's bid - Costs related to HL7 have not been included. Inclusion is requirement of the solicitation. Therefore, the Total Cost of Ownership cannot be determined.

Digital Innovation Response: As part of the RFP process, vendors were allowed to ask questions related to the RFP. On Addendum 1 of the SC solicitation as question was presented relating to the HL7 requirements. The question and response from Addendum 1 has been included below:

As copied directly from Addendum 1:

The requirements discuss HL7 and EMR integration requirements. What method is envisioned for Hospital EMR's to "connect" to this web system? It seems highly unlikely each hospital network would allow a cloud system to "reach in" and pull data from their network? It would require some type of "push software" in a hospital to avoid a pull. In either event there would be significant firewall issues and requirements. More details are required to provide a response to this requirement.

**This criteria has been included at the recommendation of the stakeholders in South Carolina to allow for possible expansion and collaboration. The "connection" would be determined by each individual facility. It is not required for facilities to participate in any data exchange, however, if they choose to do so, the registry vendor shall have the capability to "push" or "pull" data based on established agreements between the hospital, EMR provider, and state registry provider. The state is not responsible for any facility level firewall or network options that may be necessary.**

DI noted that HL7 interfacing is available and included in our response, however, insufficient information on the "connection" required for each individual facility was not provided by the State to provide an exact cost. Moreover, the response notes that the HL7 EMR download criteria was requested as a FUTURE option for POSSIBLE expansion. Hence, the response provided by the State of South Carolina on direct question, was that this requirement was not a mandatory and would need to be discussed and implemented uniquely for each hospital wishing to have a unique "connection". Therefore, no vendor could provide an accurate or definitive price quote based upon this response without detailed specifications or requirements with each hospital desiring to participate in an interfacing project.

ImageTrend response to question #14 of the SC solicitation is as follows:

Yes, Patient Registry has an optional integration that connects a hospital's EMR with the Patient Registry in an HL7 file format.

If DI's bid response makes us non-responsive since "Total Cost of Ownership" could not be provided, then please explain how saying you have an optional HL7 solution provides clarification related to the "Total Cost of Ownership". Candidly, DI and ImageTrend's answers are the same and both should stand as being responsive based on the State's clarification in Addendum #1 (related to vendor questions). Both answers are responsive because the State noted, that they only asked the question related to HL7 integration for POSSIBLE expansion.

However, as noted specifically in point #7 of our cover letter that accompanied our bid, DI provided the availability of our HL7 Receiving Module to support unique requirement (e.g. by each facility) assuming that the standard data fields that were included did not meet the unique requirements of the individual users.

13. One page 18 number 61 of DI's bid- 24/7 support (solicitation requirement) cannot be provided per DI's response.

[Digital Innovation Response](#): Attached below is the direct response from DI RFP submission related to page 18, number 61:

#### 61. 24/7 technical support and online chat support

Digital Innovation Response: **DI provides 24/7 technical support** and provides on-line chat support for clients utilizing and registering to use the DI Support Portal.

So, DI is providing 24/7 technical support for the system and hosting environment. Additionally, DI noted the following:

DI has priced 24 X 7 system monitoring and technical support and is providing application support from 8:30 AM to 5:00 PM Monday through Friday.

Technical support to DI references technical issues not clinical or application issues. If application or clinical support is desired 24/7 then we are happy to provide that level of support for SC even though no trauma registry client in North America has desired 24/7 clinical and application support. But contrary to the comment, 24/7 technical support is provided and if desired, DI can provide 24/7 application and clinical support. DI answered the question directly and thoroughly, are we being penalized for being open and descriptive?

How did ImageTrend answer this question? Attached is their response:

Yes, ImageTrend utilizes a support system that allows users to submit support requests 24/7. ImageTrend utilizes a support system with an online chat feature. ImageTrend offers an online support system, Support Suite, which incorporates around-the-clock incident reporting of all submitted tickets to ImageTrend's support desk specialists. Once a client submits a support ticket, he or she can easily track its progress with a secure login, promoting a support log for the client and ImageTrend's support team. The system promotes speedy resolution by offering keyword-based self-help services and articles in the knowledgebase, should clients wish to bypass traditional support services.

So, DI provides direct technical support access 24/7 while ImageTrend allows users to submit support requests 24/7. Seriously, we all have email address for our support teams that can allow users to SUBMIT a support request. DI hardly finds that allowing a support request to be entered qualifies as 24/7 technical support. Sadly, once again it appears that the State Trauma Leadership was willing to turn a blind-eye to this ImageTrend response while spending as Mr. Michael Dalton describes as "hours of scrutiny" on DI bid.

14. Page 31 notes 4- this imposes different terms as outlined by DI. Current and legacy systems are independent of this project as the State is soliciting for a new Web Based Trauma Registry.

[Digital Innovation Response](#): Item 14 is a duplicate of point number 7 above. DI's response in #7 above fully addresses the point based on our comments related to the Prompt Payment Discount issue.

### **SC Code of Laws**

#### **SECTION 11-35-1410. Definitions of terms used in this article.**

Unless the context clearly indicates otherwise:

- (1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the cost principles as provided in Article 13 of this chapter and a fee, if any.
- (2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:
  - (a) is regularly maintained by a manufacturer or vendor of an item;
  - (b) is either published or otherwise available for inspection by customers;
  - (c) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies, services, or information technology involved.
- (3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 11-35-1520.
- (4) "Purchase description" means specifications or other document describing the supplies, services, information technology, or construction to be procured.

- (5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.
- (7) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 20; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 23.

## **State Regulations**

### **19-445.2070. Rejection of Individual Bids.**

- A. General Application. Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.
- B. Alternate Bids. Any bid which does not conform to the specifications contained or referenced in the invitation for bids may be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.
- C. Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.
- D. Modification of Requirements by Bidder.
- (1) Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the State, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder: (a) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the State cannot be determined; (b) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;" (c) states a price but qualified such price as being subject to "price in effect at time of delivery;" (d) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement; (e) requires the State to determine that the bidder's product meets state specifications; or (f) limits the rights of the State under any contract clause.
- (2) Bidders may be requested to delete objectionable conditions from their bid provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other bidders. Bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.
- E. Price Unreasonableness. Any bid may be rejected if the procurement officer determines in writing that it is unreasonable as to price.
- F. Bid Security Requirement. When a bid security is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected.
- G. Exceptions to Rejection Procedures. Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening.

HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007.

Michael Dalton  
Procurement Officer  
ITMO

## Attachment 2

# Memorandum for Record

## Determination of Non-Responsive Proposal

### Solicitation # 5400014425

### State Trauma Registry

### SC Department of Health and Environmental Control

Pursuant to SC Code of Laws, State Regulations and clauses and Solicitation 5400014678 referenced herein, the bid submitted by Digital Innovation (DI) is determined to be non-responsive to the solicitation, in accordance with SC Code §11-35-1410(7). The non-responsive determination is based one or more of the following:

1. The solicitation required a true web based system. This is not the solution proposed by Digital Innovation. The response states for local registry software in the second to last paragraph on Page 6. This is not pertinent or relevant to this request for bid, and is clearly stating they do not intend to provide the service we are requesting. These terms were vetted by stakeholders of SC and are required.
2. On Page 5 of DI's bid, in the CEO note, stresses the need for local software, contrary to the solicitation requirements. This section and the "Local Software Values Factors" proves DI's proposed solution is non-responsive to the solicitation requirements.
3. The web-based central site option referred to by DI on Page 7 is not truly web based and requires installation on a local server which is contrary to the solicitation requirements.
4. On page 35 of DI's bid - Data collection/Entry- DI's solution requires local subscriptions. States to be uploaded via web portal, contrary to solicitation requirements.
5. The data flow and descriptions on page 33 number 2 indicate this is not a true web based system, rather a way to "shuffle" data from one place to the other.
6. On page 23 of DI's bid (Product Support) second bullet- On-site installation conflicts directly with the bid. Is to be a strictly web based system with no local download.
7. Page 31 notes 4 of the DI response imposes terms contrary to solicitation requirements. Current and legacy systems are independent of this project as we are soliciting for a new Web Based Trauma Registry.
8. According DHEC subject matter experts, DI's claim that the system will eliminate submission and data validation is false. This must still be done at the state level to ensure appropriate mapping. DHEC has had issues with "validating" submission data, and have been working since May 2016 to correct these issues. This is still not solved to ensure we are receiving accurate data which makes it a high priority and a solicitation requirement.
9. Page 9 of DI's bid, under the data proposition, DI implies that TriCode is included. However, page 10 of DI's bid (and in multiple other places in DI's bid) lists TriCode as an option. We did not ask for options and cannot determine the Total Cost of Ownership.
10. On page 12, number 11 and 12 state these modules are available for all registered participants. It does not clearly state that it is included in the price and therefore the Total Cost of Ownership cannot be determined.
11. On page 12, number 13 of DI's bid, DI states hospitals are responsible for ALL FEES RELATED TO TQIP PARTICIPATION. While the facilities are responsible for the cost to the ACS, the submission to TQIP is to be included in their response and does not appear to be. The same is true with NTDB. Therefore, the Total Cost of Ownership cannot be determined.
12. On page 12 number 14 of DI's bid - Costs related to HL7 have not been included. Inclusion is requirement of the solicitation. Therefore, the Total Cost of Ownership cannot be determined.
13. On page 18 number 61 of DI's bid- 24/7 support (solicitation requirement) cannot be provided per DI's response.
14. Page 31 notes 4- this imposes different terms as outlined by DI. Current and legacy systems are independent of this project as the State is soliciting for a new Web Based Trauma Registry.

### SC Code of Laws



## **SECTION 11-35-1410. Definitions of terms used in this article.**

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(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the cost principles as provided in Article 13 of this chapter and a fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or vendor of an item;

(b) is either published or otherwise available for inspection by customers;

(c) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies, services, or information technology involved.

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in Section 11-35-1520.

(4) "Purchase description" means specifications or other document describing the supplies, services, information technology, or construction to be procured.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

(7) "Responsive bidder or offeror" means a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals.

HISTORY: 1981 Act No. 148, Section 1; 1993 Act No. 178, Section 20; 1997 Act No. 153, Section 1; 2006 Act No. 376, Section 23.

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C. Any bid which fails to conform to the delivery schedule, to permissible alternates thereto stated in the invitation for bids, or to other material requirements of the solicitation may be rejected as nonresponsive.

D. Modification of Requirements by Bidder.

(1) Ordinarily a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the State, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids should be rejected in which the bidder: (a) attempts to protect himself against future changes in conditions, such as increased costs, if total possible cost to the State cannot be determined; (b) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;" (c) states a price but qualified such price as being subject to "price in effect at time of delivery;" (d) when not authorized by the invitation, conditions or qualifies his bid by

stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement; (e) requires the State to determine that the bidder's product meets state specifications; or (f) limits the rights of the State under any contract clause.

(2) Bidders may be requested to delete objectionable conditions from their bid provided that these conditions do not go to the substance, as distinguished from the form, of the bid or work an injustice on other bidders. Bidder should be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

E. Price Unreasonableness. Any bid may be rejected if the procurement officer determines in writing that it is unreasonable as to price.

F. Bid Security Requirement. When a bid security is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected.

G. Exceptions to Rejection Procedures. Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening.

HISTORY: Added by State Register Volume 6, Issue No. 7, eff May 7, 1982. Amended by State Register Volume 19, Issue No. 2, eff February 24, 1995; State Register Volume 23, Issue No. 5, eff May 28, 1999; State Register Volume 31, Issue No. 5, eff May 25, 2007.

Michael Dalton  
Procurement Officer  
ITMO

## Attachment 3

### Concerns regarding DI bid

1. The appropriate format was not submitted. Information seems to provide opinion of what DHEC should do instead of response to the information solicited.
2. There is inconsistent information in the document regarding TriCode. On the first page it states it is an Option (with no cost identified), but later in the document it appears to be included.
3. ITDX is a concept that has been in the works for several years. It is not functional at this time but DI has included it in the bid response.
4. The response as presented does not show the vast differences DHEC is soliciting for compared to the system we currently have.
5. The bid is suggesting the fact each individual hospital will maintain an independent subscription and will be charged for maintenance and other associated fees. We solicited a bid to eliminate these fees for the facilities that choose to use our system. Regardless of the vendor opinion, the intent is to find a true web based system. This is not the solution proposed in this submission.
6. The claim on page 2 (of the letter) that the system will eliminate submission and data validation is false. This must still be done at the state level to ensure appropriate mapping. We have had issues with "validating" submission data, and have been working since May 2016 to correct these issues. This is still not solved to ensure we are receiving accurate data which makes it a high priority and requirement for DHEC.
7. On Page 5 of the bid, in the CEO note, the response is written to determine the desires of the State but this conflicts with our solicitation. The criteria was developed by a group of stakeholders. This section of their response also stresses the need for local software. This is not what DHEC is requesting. No facility is required to use our registry. However, it is clearly stated that if they do, it will not require a local system and that it will be at no cost to the facility. This section and the "Local Software Values Factors" is exactly the opposite of the system we are soliciting for implementation.
8. The vendor is using language that is inaccurate. On page 6 in the Planning considerations section, it states "the RFP is frustration over the integration of trauma registry from third party vendors". That is not an accurate statement as we are soliciting for a new Web Based Trauma Registry in order to encourage more to report to the registry and take on the burden of the funding for the registry. The bullet points under this section also are inaccurate.
  - a. SC only has 16 trauma centers, not 22, and the only identified negative impact to the centers using v5 is that which may be caused by whoever is selected as the contractor.
  - b. The linkage and autofill capabilities are not currently available in the system we have, and it is not clear whether or not they are including it in this response and should be. This will also create more validation and data analysis work.
  - c. Bullet 3 states the TVA will be providing a free version. This is not yet established according to the information we have.
9. The response states for local registry software in the second to last paragraph on Page 6. This is not pertinent or relevant to this request for bid, and is clearly stating they do not intend to provide the service we are requesting. These terms were vetted by stakeholders of SC and are required.

10. The web-based central site option referred to by DI on Page 7 is the same service we have currently. This is not truly web based and requires installation on our local server which is not what we solicited for.
11. Page 8- Data validation states it has built a data validation tool for South Carolina. DHEC is currently unable to use this tool to validate data. The claim is false and benchmarking from this data is not possible. Additionally, there are benchmarking requirement for the trauma centers set forth by the American College of Surgeons. Despite information submitted in the response, the ACS will not accept this benchmarking for verification. Since SC is requiring ACS Verification, each of the centers relying on this will lose their status if the appropriate benchmarking is not done.
12. Page 9 under the data proposition it implies TriCode is included. Previously listed as an option. We did not ask for options and cannot determine the absolute cost of this product
13. Central Site data aggregation (page 10) is what we currently have and it not the desire result that DHEC is seeking with this solicitation.
14. Page 10- note again refers to TriCode as an option
15. Page 10 number 2- the ITDX is not created and formatted. Also ensuring successful submission does not mean accurate and valid submission. This is not acceptable and will require more work from the state.
16. Page 10 number 3 states that this will be a software. We asked for no software requirement.
17. DI Driller seems to be the only a cost savings for facilities currently using it. It does not specify that it will be available at no cost to all facilities regardless if they are using it currently or not which is what we are soliciting for.
18. Page 11 Number 5- we solicited for this capability. This is an option they have not included or given a price for. Cost is not outlined and cannot be determined.
19. On page 12, number 11 and 12 state these modules are available for all registered participants. It does not clearly state that it is included in the price.
20. Number 13 states hospitals are responsible for ALL FEES RELATED TO TQIP PARTICIPATION. While the facilities are responsible for the cost to the ACS, the submission to TQIP is to be included in their response and does not appear to be. The same is true with NTDB.
21. Page 12 number 14- Cost related to HL7 have not been included. We clearly stated this as a requirement.
22. Page 13, the vendor states that there is no need for a Level 4 data set. This is not negotiable. The stakeholders have not yet decided on what data points need to be collected. This indicates the vendor is not willing to actually provide the state with what it is asking for.
23. Page 13 number 18, this is no different from our current issues which we wrote the solicitation to address no longer be and issue.
24. Page 13 number 20 indicates the 2017 data elements are available and does not say updates are included.
25. Page 14, number 28-the vendor is offering a link to documents. States the actual request can be accommodated. This indicates the mechanisms to do so are not currently available.
26. Page 15 number 31- The integration with Microsoft Active Directory is required. The vendor indicates it can be provided. Does not specify if it is include in cost, and is not readily available.

27. Page 15 number 32- this is not negotiable and required by our IT. States functionality exists, does not commit that it is available immediately or if there is a cost associated. Therefore, this does not enable the ability to clearly identify the total cost of the project.
28. Page 17 number 53- this training shall be provided to all users, not just the web based users and DHEC staff.
29. Page 18 number 55- DI Report writer is not included in quote. Driller is.
30. Page 18 number 61- the 24/7 support cannot be provided as required per the vendors response.
31. Page 20 number 1- this is a misrepresentation. DHEC has no current contract with the vendor.
32. Page 23 (Product Support) second bullet- On-site installation conflicts directly with the bid. Is to be a strictly web based system with no local download.
33. Page 31 notes 4- this imposes different terms as outlined by DI. Current and legacy systems are independent of this project as we are soliciting for a new Web Based Trauma Registry.
34. The data flow and descriptions on page 33 number 2 indicate this is not a true web based system, rather a way to “shuffle” data from one place to the other.
35. Page 34 number 7- this explanation provided by the vendor is further proof that their product and bid is not providing what was asked for. Uploads, local software, numerous different translations for uploads, these are all problematic and consistent with the model we currently have and are attempting to replace.
36. This is not all inclusive. There should be no “store and forward” as it is all to be vendor hosted...for each of the up to 64 facilities and the state.
37. There should be no limitations or difference of performance improvement or data access based on whether it is locally installed or web based. This is a mechanism for the vendor to require local options. This was to be included in their bid and is not clear whether it is or not.
38. Page 35- Data collection/Entry- again requiring local subscriptions. States to be uploaded via web portal, is not what we asked.
39. Page 36 last paragraph- this linkage is not in place or available at this time.
40. Page 38 First Paragraph- “selected queries and reports can be made available...” All reports MUST be available
41. Page 38- There are multiple problems with the web report distribution sections.
42. Page 40- References. Only one of the references is using a web based system
43. There are numerous issues with the proposed training. Most importantly is does not focus on recognition of the system.

In Summary, this is just a basic list of concerns and discrepancies. They have essentially re-defined what we are looking for based on what is best for their business. Additionally, our data manager reviewed the bid and compared it to what we have now and there are little to no difference. The whole reason for this bid was to established a new Registry that was being funded by the State DHEC and to be a fully Web Based Registry.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised July 2017)*

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.

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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 367, Columbia, SC 29201**

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\_\_\_\_\_  
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.**