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## Protest Decision

**Matter of:** Noverant, Inc.

**Case No.:** 2020-201

**Posting Date:** August 30, 2019

**Contracting Entity:** South Carolina Department of Transportation

**Solicitation No.:** 5400018321

**Description:** Intent to Sole Source a Web Based Learning System from Cornerstone OnDemand, Inc.

### DIGEST

Protest alleging inappropriate intent to sole source is granted. Noverant's letter of protest is included by reference. (Attachment 1)

### AUTHORITY

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

## BACKGROUND

Original Solicitation Issued	February 25, 2014
Original Amendment 1 Issued	March 26, 2014
Original Award Effective Date	July 8, 2014
Request for Sole Source	July 9, 2019
SCBO Ad for Web Based Learning System	July 22, 2019

The Department of Transportation (DOT) published a solicitation in February 2014 to replace its five-year-old Moodle learning management system (LMS), and a five-year contract was awarded to Cornerstone OnDemand, Inc. effective July 8, 2014. DOT procurement received an internal request to continue its relationship with Cornerstone through a sole source contract on July 9, 2019. DOT advertised its intention to enter into a sole source contract with Cornerstone for the LMS on July 22, 2019. Noverant challenged DOT's decision to award a sole source contract to Cornerstone on July 25, 2019.

## ANALYSIS

Noverant argues:

*Noverant rejects the notion that there is only one potential source. In fact, based on available information, there are multiple LMS providers who could provide compliant solutions for the State.*

Noverant is confident that a procurement would be in the best interest of the State and respectfully requests that the State open the solicitation to qualified bidders.

(emphasis in original)

Section 11-35-1560(A) of the Code authorizes the award of a contract without competition when there is only one source for the required service:

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

Regulation 19-445.2105(B) provides that:

Sole source procurement is not permissible unless there is only a single supplier.

Section 11-35-1560(B) requires that:

Any decision by a governmental body that a procurement be restricted to one potential vendor must be accompanied by a thorough, detailed explanation as to why no other will be suitable or acceptable to meet the need.

The scope of the sole source determination is further outlined in Regulation 19-445.2105(C):

The determination as to whether a procurement shall be made as a sole source shall be made by either the Chief Procurement Officer, the head of a purchasing agency, or designee of either office above the level of the procurement officer.... Such determination and the basis therefor shall be in writing. Such officer may specify the application of such determination and the duration of its effectiveness. In cases of reasonable doubt, competition should be solicited. Any request by a governmental body that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need. The determination must contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision. The determination must be authorized prior to contract execution.

The Code and Regulations establish the minimum requirements a sole source justification must meet:

- The justification must describe the need to be met,
- Identify the product or service that will meet that need,
- Establish that the chosen product or services is only available from a single source,
- Include a thorough, detailed explanation as to why no other product or service will be suitable or acceptable to meet the need,
- Contain sufficient factual grounds and reasoning to provide an informed, objective explanation for the decision.

DOT's Justification for Sole Source Procurement (Attachment 2) states that:

SCDOT has utilized the Cornerstone LMS for 5 years. The system currently houses all our training records, including historical records for online classroom and external training for any active employee since 2014. Due to the amount of records housed, it would be extremely time consuming and cost heavy to transfer the over 250,000 transcript items to a new vendor.

Attached to the Justification is a letter from Cornerstone dated July 11, 2019 attesting to the fact that Cornerstone is the only provider of the Cornerstone Learning Suite.

Also attached to DOT's Justification is an interoffice memorandum from DOT's Training and Development Division which states in part that:<sup>1</sup>

There are currently 212 classroom based trainings, 442 on line modules, and 43 curriculums active in the LMS catalog. The combination of completions for these training types is over 250,000 individual transcript items for *active* employees recorded Cornerstone LMS. Training and Development can also report on employees who are no longer with SCOOT, which would increase the number of housed transcript items exponentially....

As we continued to rely on Cornerstone Learning Management System to assign reoccurring required training, there are multiple dynamic assignments scheduled...

There are two LMS Administrators who manage an average 4425 learning accounts in the LMS, along with other job duties. The ability to have a process in place that can automatically manage reassignment of required trainings on a daily basis is a quality benefit not found with all other Learning Management Systems....

Each of our 87 learning managers have been trained on the Cornerstone system and receive training updates as the LMS improves....

The LMS needs of Training and Development and SCOOT are being met with the Cornerstone product and we request a Sole-Source Procurement to continue our contract with Cornerstone on an on-going basis. The request is made based on vendor satisfaction and the unnecessary intense labor that would be required to transfer training records and retrain all employees on a new learning management system.

DOT's justification establishes the need for an LMS, identifies the Cornerstone LMS as a product that meets its need, and establishes that the Cornerstone LMS is only available from Cornerstone.

The justification claims that no other product or service will be suitable or acceptable to meet the need because of the "labor that would be required to transfer training records and retrain all employees on a new learning management system." While the number of records and affected employees is listed, there is no indication that DOT sampled the market to determine if

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<sup>1</sup> Also attached to the Justification for Sole Source Procurement is a; an order form for the first year of service from Cornerstone with an effective date of June 24, 2019 and signed by DOT's procurement director on June 19, 2019; and a Drug Free Workplace certification signed by Cornerstone on July 11, 2019. The fact that the intent to sole source wasn't published until July 22, 2019, may indicate a violation of the Code requirement that

comparable services were available and no estimate of the cost or level of effort required to migrate to a new system.

The current data volumes appear reasonably comparable to the volume of data migrated from Moodle to Cornerstone in 2014. The current data volumes as listed in the sole source justification:

There are currently 212 classroom based trainings, 442 on line modules, and 43 curriculums active in the LMS catalog. The combination of completions for these training types is over 250,000 individual transcript items for *active* employees recorded Cornerstone LMS. Training and Development can also report on employees who are no longer with SCOOT, which would increase the number of housed transcript items exponentially.

Data volumes published in the 2014 solicitation amendment:

Question: Is there Prior Learning or Academic History that needs to be converted for your users? If so, how many years of history?

States Response: Yes. There are currently forty (40) years of stored history. All training records (course and program completion) from the current LMS will be transferred. This includes five (5) years of history and roughly eighty thousand (80,000) records, this information must be converted. SCDOT has non online training records that date back to the eighty's (80's) and consist of over six-hundred thousand (600,000) records. This information does not need to be converted in its entirety, up to seven (7) years and roughly two-hundred thousand (200,000) records may need to be converted. Again, all non-online training records will not need to be transferred, SCDOT is flexible on the amount of non-online training records that will need to be converted to the new system.

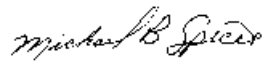
Simply listing the current data volume without additional analysis is not sufficient basis for a claim that it would be too labor intensive or costly.

All contracts must eventually end, historic data will have to be migrated, and employees will have to be retrained. Data migration and staff retraining are valid considerations regardless of the source selection method; however, without market analysis and a good faith estimate of the cost and level of effort there is no basis for a determination to limit competition to a single source.

## **DECISION**

The Department of Transportation's Sole Source Justification is not sufficient to limit competition to a single source. The Department is directed to conduct this procurement in accordance with the Code.

For the Information Technology Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**From:** [Frank Gozzo](#)  
**To:** [Protest-MMO](#)  
**Subject:** [External] Solicitation 5400018321 - Web-Based Learning Management System  
**Date:** Thursday, July 25, 2019 7:11:37 PM

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Noverant respectfully disagrees with the State's decision to proceed with the subject sole-source procurement. The basis of our position is consistent with SECTION 11-35-1560. More specifically:

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

*Noverant rejects the notion that there is only one potential source. In fact, based on available information, there are multiple LMS providers who could provide compliant solutions for the State.*

- (B) These regulations must include the requirements contained in this paragraph. Written documentation must include the determination and basis for the proposed sole source procurement. A delegation of authority by either the chief procurement officer or the head of a governmental body with respect to sole source determinations must be submitted in writing to the Materials Management Officer. In cases of reasonable doubt, competition must be solicited. Any decision by a governmental body that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

*Based on recent procurement activity in the industry, Noverant believes there is clearly reasonable doubt and so competition must be solicited.*

Noverant is confident that a procurement would be in the best interest of the State and respectfully requests that the State open the solicitation to qualified bidders.

Sincerely,

Dr. Frank Gozzo

President & CEO  
Noverant, Inc.  
919 426-5494  
[www.noverant.com](http://www.noverant.com)

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## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2019)*

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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: \_\_\_\_\_

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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.**