

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

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

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

Protest Decision

Matter of: Apogee Telecom, Inc.

Case No.: 2020-205

Posting Date: December 2, 2019

Contracting Entity: University of South Carolina

Solicitation No.: USC-RFP-3531-LD

Description: Provide Wired Internet, Wi-Fi, and Cable Television Package for USC Upstate Housing

DIGEST

Protest alleging that apparent successful offeror is not a responsible bidder is denied. Apogee Telecom's letter of protest is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer¹ (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.

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

BACKGROUND

Solicitation Issued	August 09, 2019
Amendment 1 Issued	August 14, 2019
Amendment 2 Issued	August 16, 2019
Amendment 3 Issued	August 21, 2019
Amendment 4 Issued	August 27, 2019
Intent to Award Posted	October 10, 2019
Intent to Protest Received	October 18, 2019
Protest Received	October 25, 2019

The University of South Carolina (USC) issued this Request for Proposals on August 9, 2019. The purpose of this procurement was to acquire a qualified vendor to provide bundled services including: wired internet, Wi-Fi, and Cable TV entertainment (and/or IPTV) packages for the residential facilities and affiliated common areas on the campus of USC Upstate. An Intent to Award was posted to Boingo Wireless, Inc. on October 10, 2019. Apogee advised the CPO of its intent to protest on October 18, 2019 and submitted its actual protest on October 25, 2019.

ANALYSIS

Apogee protests that Boingo is not a responsible bidder as its references and experience do not meet the requirements stated in the solicitation:

It is our position that the references provided by the selected awardee, do not meet the criteria set out by the University. The references are at best misleading. These agreements were not forged by actual authorized University officials, rather separate independent real estate investment trusts. Two of the email addresses are indicative of this (greystar.com) and the third has been provided a .edu address, but is not an officer of the University, rather a full time employee with said real estate investment trust.

The provisionally awarded vendor is a separate independent Multi Dwelling Unit (MDU) provider with an off-campus service delivery model. This is significant as the deployment, service, and financial model is quite different. Additional evidence appears within the property list provided by the awarded vendor on page 29 of their response showcases their experience as an off-campus provider, without noting that critical distinction. The vendor's response implies that the University of Texas at Austin is a contracted client where they provide a similar set and size of services to the University, which is not true. Apogee, not Boingo, is the actual provider to The University of Texas at Austin as evidenced by the attached contract between Apogee and the University. Currently, Apogee

provides the underlying internet connectivity to the building at 2400 Nueces cited in the Boingo proposal.

The criteria referenced by Apogee are found in the Scope of Work/Specification section of the solicitation as follows:

- Prospective partners (Offerors) must demonstrate experience with several higher education institutions of similar size to be considered for this project.
- Must provide three college or university references where both ResNet (Residential Energy Services Network?) & CATV (Cable Television?) services are being provided.

[Solicitation, Page 11]

Typically, an Offeror's experience and references are considered in determining an Offeror's responsibility as required by Section 11-35-1810:

Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.

(emphasis added)

Information about the Offeror's experience carried additional importance in this procurement as the solicitation included it as one of three evaluation criteria:

- A. Offeror's Detailed Explanation of Proposed System & Offeror's Answers to Questions listed in Section III of the solicitation
- B. Offeror's Experience
- C. Offeror's Business Proposal

[Solicitation, Page 18]

Section IV of the solicitation offered bidders the following guidance in preparing their proposals:

PROPOSAL CONTENTS

To be considered for award, all proposals should include, as a minimum, the following information. All information should be presented in the order listed. Offerors should restate each item below and provide their response to that item immediately thereafter.

1. Detailed Explanation of Proposed System and Offeror's Answers to Questions listed in Section III of the solicitation (The completeness and suitability

of offering company's proposed system to meet or exceed the University's needs stated herein).

2. Company Experience (Qualifications and experience of company in successful implementation of proposal and completing projects of similar size and scope within higher education.)
3. Business Proposal (Cost Per Year of maximum 5-year contract)

(emphasis in original) [Solicitation, Page 16]

Boingo included a four-page section in its proposal dedicated to its relevant experience that included narrative statements about three recent comparable contracts (Mississippi State University, Lehigh University, and University of North Carolina), three collegiate references (Boise State University, University of Kentucky, and University of North Carolina), and the following:

In order to maintain confidentiality with our partners, Boingo does not disclose extensive lists of our projects or customers. Boingo operates on and off campus projects in over 43 states and the list below shows a sampling of similar projects.

Name	Location
The Lofts at USC	University of South Carolina
Cayce Cove	University of South Carolina
The Station at Five Points	University of South Carolina
University of Kentucky Housing	University of Kentucky
Boise Honors	Boise State University
College View	Mississippi State University
Bowles Hall	UC Berkeley
Geneva Towers	SUNY Upstate Medical
2400 Nueces	UT Austin
Southside Commons	Lehigh University
University Towers	NC State University

Boingo included names, addresses, phone numbers and email addresses for each reference. The email address domain for the Boise State University and University of North Carolina references was @greystar.com. The email address domain for the University of Kentucky reference was @uky.edu. The Procurement Officer advises that the references were not contacted.

(Attachment 2)

One requirement cited by Apogee required that an Offeror demonstrate experience with several higher education institutions of similar size. This requirement was not listed as a special standard of responsibility. Boingo listed three universities. The adequacy of Boingo's experience is left to the discretion of the evaluators.

In the *Appeal of Travelsigns*, Case 1995-8 the Procurement Review Panel noted:

In fact, neither the Code nor the RFP requires the evaluators to look beyond the information that is submitted by the offeror in its proposal. As in an employment application, the RFP may require offerors to provide references, which may or may not be contacted. It is the responsibility of the offeror to include in its proposal information in response to the requirements of the RFP. It is the evaluator's responsibility to consider the information provided.

Three evaluators evaluated and scored the Offerors' experience. Apogee makes no claim that the evaluation was flawed or violated the Code.

The second requirement cited by Apogee required the Offeror provide three college or university references where the services are being provided. Boingo provided three references with contact information as cited by Apogee. Apogee does not allege that the universities listed were not receiving the services, only that the services were provided through an off-campus service delivery model. However, since the references were not contacted, they had no impact on the evaluation beyond Boingo's claim that they were receiving the services.

Apogee also alleges:

The vendor's response implies that the University of Texas at Austin is a contracted client where they provide a similar set and size of services to the University, which is not true. Apogee, not Boingo, is the actual provider to The University of Texas at Austin as evidenced by the attached contract between Apogee and the University.

The reference cited by Apogee appears in a list of "similar projects" in Boingo's proposal which is prefaced with:

Boingo operates on and off campus projects in over 43 states and the list below shows a sampling of similar projects.

Protest Decision, page 6

Case No. 2020-205

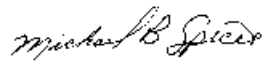
December 2, 2019

While there may be an implication that Boingo is currently providing these services, the inclusion of this listing makes no such claim. Apogee makes no argument of adverse effects or violations of the Code related to this inclusion.

DECISION

For the reasons stated above, the protest of Apogee Telecom, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



October 25, 2019

Chief Procurement Officer
Information Technology Management Office
1201 Main Street Suite 601
Columbia, SC 29201

Re: Solicitation Number USC-RFP-3531-LD

Dear Chief Procurement Officer,

We are in receipt of Intent to Award, Wired Internet, Wi-Fi, and Cable Television Package for USC Upstate Housing, and pursuant to South Carolina Consolidated Procurement Code section 11-35-4210, we hereby timely submit this protest letter. Apogee appreciates the opportunity to raise its practical concerns to USC and values its existing long-term partnership with the institution.

After review of pre-RFP notes, the published RFP, correspondence that followed, and the proposal response by the intended awardee there are gaps and material inconsistencies that we request be considered.

Most notably, within Section III. Scope of Work/Specifications, A, the University requested the following:

- Prospective partners (Offerors) must demonstrate experience with several higher education institutions of similar size to be considered for this project.
- Must provide three college or university references where both ResNet (Residential Energy Services Network?) & CATV (Cable Television?) services are being provided.

It is our position that the references provided by the selected awardee, do not meet the criteria set out by the University. The references are at best misleading. These agreements were not forged by actual authorized University officials, rather separate independent real estate investment trusts. Two of the email addresses are indicative of this (greystar.com) and the third has been provided a .edu address, but is not an officer of the University, rather a full time employee with said real estate investment trust.

The provisionally awarded vendor is a separate independent Multi Dwelling Unit (MDU) provider with an off-campus service delivery model. This is significant as the deployment, service, and financial model is quite different. Additional evidence appears within the property list provided by the awarded vendor on page 29 of their response showcases their experience as an off-campus provider, without noting that critical distinction. The vendor's response implies that the University of Texas at Austin is a contracted client where they provide a similar set and size of services to the University, which is not true. Apogee, not Boingo, is the actual provider to The University of Texas at Austin as evidenced by the attached contract between Apogee and the University. Currently, Apogee provides the underlying internet connectivity to the building at 2400 Nueces cited in the Boingo proposal.

Further, Apogee Telecom owns and operates a wholly owned subsidiary, Campus Connect, which specializes in MDUs comparable to the awarded vendor. We chose to submit a bid solely as Apogee due to the very clear expectation that USC Upstate was seeking a partner who provided services directly to

Universities, and could provide actual “college or university references from the University officials where both ResNet and CATV services are being provided.”

We are requesting that the University re-bid this project. In no way would this impact a prospective vendor’s ability to deliver on the expected service turn-up date given by the school. Our recommendation is that the University explicitly request a partner who has contracted directly with higher education institutions as evidenced by copies of contracts or alternatively that the bid is re-opened to all MDU service providers without direct university experience and qualifications to participate.

We appreciate your consideration of our appeal. Should additional information be requested, we’re happy to provide.

Regards,

Charles “Chuck” Brady
Chief Executive Officer
Apogee

Attachment 2

From: [DELOACH, LEANN](#)
To: [Spicer, Michael](#)
Subject: RE: [External] RE: In the Matter of the Protest of Apogee Telecom, Inc., Case 2020-205
Date: Tuesday, October 29, 2019 9:25:07 AM

Mike,

No the committee & USC Upstate elected for references not to be checked since it was not apart of their evaluation criteria. Everything evaluated was based on the proposals submitted.

Thanks,

Leann DeLoach
Procurement Manager I
Purchasing Department
803-777-4117
Leann.DeLoach@sc.edu



From: Spicer, Michael <mspicer@mmo.sc.gov>
Sent: Tuesday, October 29, 2019 9:17 AM
To: DELOACH, LEANN <Leann.DeLoach@sc.edu>
Subject: RE: [External] RE: In the Matter of the Protest of Apogee Telecom, Inc., Case 2020-205

Leann,
Were the references checked?

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.

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**

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.