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Protest Decision

Matter of: Companion Data Services, LLC

Case No.: 2020-207

Posting Date: February 19, 2020

Contracting Entity: South Carolina Department of Administration Division of Technology Operations

Solicitation No.: 5400014395

Description: Mainframe Services Provider

DIGEST

Protest alleging the apparent successful proposal is not responsive is denied. Companion Data Services' (CDS) letter of protest is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative hearing pursuant to S.C. Code Ann. §11-35-4210(4) on January 17, 2020, to receive information and testimony related to the issues of protest. CDS was represented by Michael H. Montgomery, Esq.; Tierpoint, LLC / Computer Technologies U.S.A. LLC d/b/a Blue Hill Data Services were represented by E. Wade Mullins, III, Esq.; the Department of Administration was represented by David Sella-Villa, Esq.; and the CPO was represented by Manton M. Grier, Jr., Esq.

BACKGROUND

Solicitation Issued	03/15/2018
Amendment 1 Issued	05/07/2018
Amendment 2 Issued	05/31/2018
Amendment 3 Issued	06/45/2018
Amendment 4 Issued	06/27/2018
Amendment 5 Issued	07/05/2018
Proposals Received	07/23/2018
Amendment 6 Issued	05/09/2019
Amendment 7 Issued	05/20/2019
Amendment 8 Issued	05/30/2019
Intent to Award Posted	11/01/2019
Initial Protest Received	11/12/2019
Amended Protest Received	11/18/2019

The State Fiscal Accountability Authority (SFAA) issued this Request for Proposals on behalf of the South Carolina Department of Administration, Division of Technology Operations (DTO) on March 15, 2018 to acquire data center and mainframe services. Section III of the solicitation contains the scope of the work to be performed by the Contractor. Section III includes 78 tables listing required functions in various categories and indicating whether the Contractor or the State is responsible for that function. Section IV of the solicitation defined the desired content and format of the Offerors' proposals to be considered during evaluation. Proposals were to be submitted in two parts: a technical proposal and a price proposal. The technical proposal was to include a signed cover page, an executive overview not to exceed 5 pages, and a technical proposal not to exceed 70 pages. Instructions for the technical proposal included critical elements to be addressed and approximately 23 tables for Offerors to commit to provide specific solutions or alternate solution to requirements in Section III of the solicitation. Responses to each critical element were limited by page count. For the Price Proposal, Offerors were to complete a pre-populated spreadsheet (Schedule 1) to reflect a total cost for its proposed solution. Price was evaluated using a well-worn mathematical formula.

Proposals were received from CDS, The Consultants Consortium, Ensono, International Business Machines (IBM), and Tierpoint / Computer Technologies U.S.A. LLC d/b/a Blue Hill Data Services (TPBH) on July 23, 2018. Best and Final offers were solicited on May 9, 2019

and responses were received from CDS, Ensono, IBM, and TPBH on June 19, 2019. An Intent to Award was posted to TPBH on November 1, 2019.

On November 5, 2019, CDS requested copies of any and all proposals, evaluation materials, and proposed contracts, including but not limited to the redacted proposals, bidder communications related to the procurement, evaluators' score sheets, notes, calculations and associated materials used in making the award decision. TPBH's redacted proposal and other information were provided on November 8, 2019. CDS complained that TPBH's redactions were extensive and in violation of law. CDS's legal counsel applied for release of TPBH's unredacted proposal under a protective order on November 13, 2020. CPO released TPBH's unredacted proposal under a protective order on November 15, 2019. Since this solicitation was issued on March 15, 2018,¹ aggrieved bidders had ten calendar days from the date the intent to award was posted to file an initial letter of protest with the CPO. The tenth day of the protest period fell on a Sunday and the following Monday was a federal holiday. CDS timely filed its initial letter of protest on November 12, 2019 alleging, in part, improper redactions by TPBH. CDS timely amended its protest on November 18, 2019.

CPO reviewed TPBH's redactions and, on November 20, 2019, advised the parties that the redactions were indeed improper and requested properly redacted technical and business proposals by December 4, 2019. TPBH responded with more appropriate redactions of its technical proposal on December 2, 2019, and a properly redacted business proposal on December 5, 2019.

ANALYSIS

Alleged Joint Bid

In its opening remarks, CDS alleged that the winning proposal submitted by Tierpoint, LLC (Tierpoint) / Computer Technologies U.S.A. LLC d/b/a Blue Hill Data Services (Blue Hill) is

¹ Because this solicitation was issued prior to May 13, 2019, the changes to the Procurement Code in Act 41 of 2019 do not apply.

defective in that the relationship between the two companies is not clear, potentially in violation of the solicitation, and renders the proposal non-responsive.

“The protest letters establish the issues of the case, and any issues not established in the protest letter are untimely filed under the time constraints of S.C. Code § 11-35-4210.” *Appeal by DPConsultants, Inc.*, Panel Case. No. 1998-6. While the CPO strongly suggests that the State clarify the contractual relationship between Tierpoint, Blue Hill, and the State, this issue was not raised in CDS’s amended letter of protest and is dismissed as untimely.

Alleged Improper Redactions

CDS’s initial issue of protest alleges that TPBH’s improper redaction of its proposal renders the proposal non-responsive as provided for in the solicitation instructions:

...If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive....

[Solicitation, Page 14]

CDS argues:

TierPoint abused redactions in an unprecedented manner. Here, the State should find Tierpoint's proposal nonresponsive based upon the fact that virtually the entire proposal is improperly redacted. The CPO has previously warned vendors about problems inherent in excess redactions. It is time for the State to take action to ensure that the vendor community follows the redaction rules, and this extreme case begs for the CPO to exercise the remedy outlined in the Solicitation - a determination of non-responsiveness. *See. e.g., Matter of Palmetto GBA, LLC, 2017-125, taking into consideration the provisions of §11-35-410, the CPO finds nothing in Xerox's response to this requirement that meets the criteria for redaction. with the possible exception of its disaster recovery site. Xerox's response to paragraph 3.2. 7 was improperly redacted. See also. Matter of PS Energy Group, 2017-105*

Section 11-35-1410(7) defines a “responsive offeror” as “a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or requests for proposals.” Minor informalities or irregularities, however, that are “merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of supplies or

performance of the contract,” may be waived if not prejudicial to other offerors. S.C. Code § 11-35-1520(13).²

“[A] requirement is not ‘essential’ simply because the RFP states that it is mandatory.” *Appeal by Coastal Rapid Public Transit Authority*, Panel Case No. 2000-4.

In order to be responsive, a proposal need not conform to all of the requirements of the RFP; it must simply conform to all of the essential requirements of the RFP....Because the Code requires rejection of a proposal when it fails to meet an essential requirement but allows waiver of an immaterial variation from exact requirements, a requirement is not "essential" if variation from it has no, or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured. Waiver or correction of a variance from such a requirement is appropriate under the Code when relative standing or other rights of the bidders are not prejudiced.

Id. (quoting *Protest of National Computer Systems*, Panel Case No. 1989-13).

In this case, all Offerors were required to submit a fully responsive proposal in two parts: a technical proposal and a business proposal. [Solicitation, Page 15] If an Offeror’s proposal contained confidential information, the Offeror was to also submit a copy of the proposal with the confidential information redacted in accordance with the instructions on page 14 of the solicitation. TPBH submitted an unredacted proposal that was evaluated as fully responsive, and an improperly redacted copy that was clearly in violation of the instructions in the solicitation.

Improper redaction of a responsive proposal, however, does not affect price, quality, quantity, or delivery of the supplies or performance of the services being procured and therefore cannot be a material and essential requirement of the solicitation and consequently cannot be considered an issue of responsiveness. As the Panel found in *Coastal Rapid Public Transit Authority*, a requirement is not “essential” simply because the RFP states that it is mandatory.

While the failure to follow simple instructions on how to submit a properly redacted proposal might be indicative of an offeror’s ability to perform fully the contract requirements, and, if intentional, the integrity of the Offeror which would reflect on its responsibility as defined in

² Regulation 19-445.2095E provides that § 11-35-1520(13) applies to competitive sealed proposals.

Section 11-35-1410(8), the failure to submit a properly redacted proposal is not an issue of responsiveness. This issue of protest is denied.³

Protest Grounds 2 and 10.

CDS' s second issue of protest was combined with the second part of issue 10 to allege:

TierPoint's proposal is non-responsive because it failed to bid as specified and qualified its offer subject to additional negotiations in violation of the Responsiveness section of the Solicitation.

(Issue # 2)

TierPoint fails to provide the Mainframe Service Descriptions and Roles and Responsibilities required in Section 3 .1 of the Solicitation.

(Issue # 10)

CDS argues:

For example, rather than providing a complete proposed solution for ITIL⁴ processes as required, Tier Point's proposal contains the following language: "In order to ensure that there is a clear understanding of who will be delivering each task within the services to be provided, Blue Hill will work with the State to finalize the roles and responsibilities and who will be responsible for each." (Tier Point proposal p. 36) Similarly, on Page 37 of its Proposal, TierPoint refers to a "Sample Roles and Responsibility Matrix," which is not a commitment to provide services as required by the Solicitation. This expressly qualifies the Solicitation, which specifies precisely the roles to be provided by the successful offeror. Likewise, in the Configuration Management section of its proposal, Tier Point comments "Blue Hill and the State will agree on a formal change process and methodology for delivering this information in advance." (Proposal p.39) Again,

³ The purpose of requesting a redacted proposal with the initial offer is to facilitate a timely review by interested parties within the time constraints of the protest process. The improper redaction of materials to subvert this goal is unethical and undermines the integrity of the public procurement process. Procurement managers should review redacted proposals for propriety in determining the responsibility of an offeror prior to award and withhold award until proper redactions are received or the bidder is disqualified.

⁴ "ITIL, formerly an acronym for Information Technology Infrastructure Library, is a set of detailed practices for IT service management (ITSM) that focuses on aligning IT services with the needs of business. ITIL describes processes, procedures, tasks, and checklists which are not organization-specific nor technology-specific, but can be applied by an organization toward strategy, delivering value, and maintaining a minimum level of competency. It allows the organization to establish a baseline from which it can plan, implement, and measure. It is used to demonstrate compliance and to measure improvement." See <https://en.wikipedia.org/wiki/ITIL> (last viewed Feb. 12, 2020).

this qualifies the proposal making it contingent on some future and undefined negotiation.

Section III of the solicitation, the scope of work, required the contractor to:

21. Adhere to ITIL best practices and State approved Key Performance Indicators (KPI).

[Solicitation, Page 42]

This same section required to State to:

22. Approve the use of the ITIL best practices and KPI.

Section IV, paragraph 4.6, of the solicitation, Information for Offerors to Submit, included the following instructions:

Instructions to Offerors: (10 page limit-for all of Section 4.6) Provide descriptions of the specific solutions proposed for the State for the following management processes and describe the associated tools to be utilized for the State. For each, describe how/if the State's unique requirements will be incorporated and how/if Third Parties (for example, State, subcontractors and other services parties) will integrate with the proposed processes and leverage the same toolsets to facilitate process integration.

The first management process listed is:

ITIL Processes

Instructions to Offerors: Describe how/if the proposed management practices, procedures and tools integrate with the ITIL process framework, or other common IT industry framework, and describe the benefits of your approach.

TPBH's response can be found in Section 3.2.1, page 36, of its proposal titled Management Processes and Tools Instructions to Offerors which states:

Blue Hill is in agreement with the concept and alignment of ITIL's framework for best practices and we understand the required structure of the ITIL framework. Blue Hill includes quality service management within our standard operating procedures. We understand that utilizing consistent practices for all aspects of IT services assist in driving effectiveness and efficiency, along with achieving predictable service levels for our clients. Blue Hill embraces a quality management services model approach to ensure we are continually meeting and/or exceeding our clients' expectations. We also include flexibility required for attaining 100% client satisfaction; we have never lost a client due to poor service.

All Blue Hill solutions and services are customized per Client-specific requirements. *In order to ensure that there is a clear understanding of who will be delivering each task within all services to be provided, Blue Hill will work with the State to finalize the roles and responsibilities and who will be responsible for each.* These functional areas of responsibility will include:

- Operations Support
- Tape Operations
- Production Control/Job Scheduling
- Backup & Recovery
- Off-site Storage
- Security Administration
- Technical Support
- Database Administration
- Application Database Administration
- Applications Systems Administration
- Problem Management/Change Management/Help Desk
- Network Management
- Disaster Recovery
- Relationship Management
- Migration

(emphasis added) [TPBH Proposal, Page 36]

CDS argues that while Section III of the solicitation included requirements that the Offeror must perform, the emphasized sentence in TPBH's response to Section IV is a rejection those requirements in favor of subsequent negotiations which renders the proposal non-responsive.

Section III.A of the solicitation sets forth the roles and responsibilities of the Parties for the Services to be provided as part of the Mainframe Services Contract. [Solicitation, Page 19]

Section III.A.3 of the solicitation sets the mainframe services requirements that includes various roles and responsibilities. Section IV of the solicitation requested information to be used in evaluating proposals and guidance on how to organize and present that information. Section IV, paragraph 4.6 requested a description of the proposed management practices, procedures and tools and how they integrate with the ITIL process framework.

TPBH stated that it agreed with the ITIL concept and described proposed management practices, procedures, and tools that integrate with the ITIL process framework. The finalization of roles and responsibilities would be a practice that integrates with the ITIL process and does not

condition TPBH's commitment to perform the requirements of the solicitation or adhere to the ITIL framework. This argument fails as an example of non-responsiveness.

CDS's second protest ground also takes issue with "Sample Roles & Responsibility Matrix" provided by TPBH. This matrix was provided in response to a solicitation requirement to "[d]escribe how/if the proposed management practices, procedures and tools integrate with the ITIL process framework, or other common IT industry framework, and describe the benefits of your approach." (Solicitation, page 81). TPBH's explanation of its ITIL practices, processes and tools contains the following:

See Appendix J: Sample Roles & Responsibility Matrix.

Blue Hill completes and keeps updated a full set of Client Documentation customized for each client. This documentation is managed by the Relationship Manager, and key team members have access to this information as necessary. A sample of the contents includes: Service Management Team, Client Organization, a summary of all services, Governance Meetings, Escalation Process, Reporting Requirements, a description of their environment and network requirements, Operating Procedures, Disaster Recovery, and Financial Processes.

[Proposal, Page 37]

CDS argues that this is not a commitment to provide services as required by the solicitation. The sample matrix, however, is an example of practices employed by TPBH to support its ITIL adherence and not a rejection or qualification of any solicitation requirement. The solicitation did not ask for a point-by-point commitment to perform the services outlined in Section III of the solicitation.

Further, TPBH took no exception to the mainframe-service requirements in Section III.A.3. Section IV included a number of tables to be used by the bidders to identify issues and offer alternative solutions to Section III requirements. Table 68 in the solicitation requested Offerors to:

As described in Section IV, paragraph 3.2, please note any requirements listed in Section III.A.3—Mainframe Services for which you would seek to provide an alternative solution.

TPBH responded to Table 68 with two assumption and no exceptions to the requirements of section A.3 of the solicitation. [TPBH Proposal, Page 34] Therefore, TPHB's inclusion of the

“Sample Roles & Responsibility Matrix” did not render its proposal non-responsive. This matrix was a sample of practices supporting TPHB’s adherence to ITIL, and TPHB took no exceptions to the mainframe-service requirements in Section III.A.3.

CDS’s second protest ground also argues that TPBH’s response to a request for information about Configuration Management conditions its commitment to perform the services required in Section III of the solicitation. Section IV requested the following from Offerors:

Configuration Management

Instructions to Offerors: Describe the process for Configuration Management.

[Solicitation, Page 81]

TPBH responded:

Blue Hill follows formal procedures to implement any system configuration requirements as determined by the State. Blue Hill will effectively communicate, process, and control all changes to the baseline configuration. Blue Hill conducts weekly meetings to present, discuss the impact on technology and compliance with existing architecture, and approve proposed changes for the associated change window. Upon review and written sign-off with the client, changes can be amended as appropriate. All initiatives are prioritized and executed quickly and efficiently, to ensure that all objectives are met on a timely basis.

Blue Hill also requests being part of the State’s internal change meetings, so we are aware of any change as it may relate to the mainframe environment.

Blue Hill and the State will agree upon a formal change process and the methodology for delivering this information in advance. Blue Hill documents this through our formal change management procedures. We coordinate the necessary meetings to review and implement changes to existing change processes, ensuring that the Configuration Management procedures currently in place are best meeting the State’s needs, and that any additional requirements are met.

[TPBH Proposal, Page 39] (emphasis added)

CDS alleges that TPBH’s explanation renders the TPBH’s proposal non-responsive:

Likewise, in the Configuration Management section of its proposal, Tier Point comments "Blue Hill and the State will agree on a formal change process and methodology for delivering this information in advance." (Proposal p.39) Again, this qualifies the proposal making it contingent on some future and undefined negotiation.

Configuration management requirements are found in Section III.A.3, Table 48. [Solicitation, Page 62] Section IV also includes a number of tables that allow Offerors to note any requirements listed in particular parts of Section III for which they would offer alternative solutions. Table 68 provides that opportunity for the requirement found in Section III.A.3 – Mainframe Services:

As described in Section 3.2, please note any requirements listed in Section III.A.3—Mainframe Services for which you would seek to provide an alternative solution.

As noted above, TPBH took no exception to those requirements in Table 68 of its response. TPBH's response is a description of its process for Configuration Management as requested in the solicitation and not a rejection of the requirements in Table 48. This argument fails as an example of non-responsiveness.

Regarding the tenth protest ground, CDS argues that TPBH failed to provide the Mainframe Service Descriptions and Roles and Responsibilities required in Section III.A.3.1 of the Solicitation. The solicitation did not require an individual response to each requirement in the solicitation. TPBH took no exception to those requirements as expressed in Table 68 of its proposal. CDS renewed its argument that Blue Hill is providing the services but TierPoint submitted the proposal.

Looking at the requirements of both Sections III and IV of the solicitation, TPBH agreed to the Section III requirements of the solicitation and followed the instructions in Section IV to describe its proposed management practices, procedures, and tools. TPBH was responsive to the requirements of the solicitation. The sufficiency of TPBH's response to Section IV of the solicitation is subject to the discretion of the evaluators. This is an issue of evaluation not responsiveness. This issue of protest is denied.

During the hearing, CDS also protested that TPBH was not responsive to a network communications requirement and argued that other aspects of TPBH's proposal were not responsive. Section 11-35-4210 requires a protest be filed in writing with the appropriate chief procurement officer within 10 days of the posting of an intended award and may be amended

within 15 days of the posting of the award. The protest letter must set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. Issues raised for the first time during the CPO's administrative hearing are untimely. This issue of protest is dismissed.

Protest Ground 3

CDS' third issue of protest alleges the following without any additional explanation:

Tier Point's proposal is not responsive because it fails to affirm that it will fulfill the services requirements and responsibilities to be provided by the Contractor as enumerated in the Solicitation.

Section 11-35-4210(2) requires a protest to set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. This issue of protest is vague and lacks enough particularity to give notice of the issues to be decided. *See Appeal by Blue Cross and Blue Shield of South Carolina*, Panel Case No. 1996-9. The solicitation did not require a requirement-by-requirement response from the Offerors. TPBH expressed that it had no issues with the solicitation requirements found in Section III.A.2 – Mainframe Services Environment in Table 67, expressed two assumption but took no exceptions to the solicitation requirements found in Section III.A.3 – Mainframe Services in Table 68, and in Table 69 stated that it had no issues with the solicitation requirements found in Section III.A.4 of the solicitation. This issue of protest is denied.

Protest Ground 4

CDS' fourth issue of protest alleges:

Tierpoint failed to include the total cost to the State in violation of the Solicitation requirements because its proposal represents that it will provide all required hardware and IBM software for the solution, and its response to the BAFO excludes needed software licenses. TierPoint proposes to leave third party software and IBM (IPLA) software with the State as a "pass-through." Its BAFO does not account for these "passthrough" costs. The TierPoint BAFO accounts for \$348,000.00 worth of annual software licensing. The information provided by the State suggests that the total software subscriptions, not including the IBM licensing fees, exceed \$2,400,000.00 per year. Thus, the total cost to the State was not included in the proposal and not evaluated. It appears that this resulted in TierPoint's pricing for the five years evaluated being understated by

approximately \$12,000,000.00 which would have affected the outcome of the Solicitation.

Amendment 2, Amendment 4, and the BAFO state that the Offeror is to identify what third party software it will assume and what the Offeror expects the State to assume. Amendment 2 included the following question and response:

Follow up Question: Within the RFP document “Schedule 1.xlsx”, Tab “Mainframe Services”, Columns 27 – 37 describes Pass Through costs (such as Software Maintenance) the State has listed for the contractor to provide. Given, that the contractor is to establish within its environment a new, modernized and efficient mainframe environment what specific Pass Through costs does the State want the contractor to consider when formulating a response?

State’s Follow-up Response: The State is looking for creative and cost-effective solutions. Your proposal may or may not have pass through costs. If you do, please provide them.

(emphasis in original) [Amendment 2, Page 2]

The software issue was again addressed in Amendment 4 as follows:

1. Question Clarification: My Company is working on responding to RFP for Mainframe Outsourcing. The challenge we are running into is software pricing.

There are two options:

1. For Offeror to purchase Licenses from the vendor on behalf of State of SC. In this situation, My Company will be billed for the software and will bill the State of SC accordingly. The transfer fee to accomplish this task would be similar to purchasing brand new licenses for the software.
2. For the State of SC to retain ownership of the software and permit the rights for the software to run on Companies Mainframe at its data center. With this option, State of SC will continue to pay for software as per current charges. There will be a small fee that will be charged by the vendor for authorization to run the software products on Companies Mainframe. This would apply to all products that have were purchased by the State of SC on a one time charge basis.

The 2nd option would be a most economical option. Please provide clarity as the first option will make the outsourcing of the State of SC mainframe proposal cost prohibitive and potentially unviable.

State's Response: Concerning the above two questions on software pricing-either option 1 or 2 are viable. If option 2 is chosen, the Offeror shall clearly state what software would be retained by the State of South Carolina.

Any additional associated software fees charged by the contractor for authorization to run the software on an Offeror's mainframe shall be clearly identified and then priced within the Offerors proposal to the State.

(emphasis in original) [Amendment 4, Page 2]

The question and answer from Amendment 2 were repeated in Amendment 5 as follows:

Follow up Question: Within the RFP document "Schedule 1.xlsx", Tab "Mainframe Services", Columns 27 – 37 describes Pass Through costs (such as Software Maintenance) the State has listed for the contractor to provide. Given, that the contractor is to establish within its environment a new, modernized and efficient mainframe environment what specific Pass Through costs does the State want the contractor to consider when formulating a response?

State's Follow-up Response: The State is looking for creative and cost-effective solutions. Your proposal may or may not have pass through costs. If you do, please provide them.

(emphasis in original) [Solicitation Amendment 5, Page 132]

The interpretation of these questions and answers resulted in some Offerors like CDS treating the cost for software the State retained as a pass-through cost and including it in their price proposal. Other Offerors like TPBH did not include State retained costs as a pass through.

Price was weighted at 30 points in the evaluation. Pricing was evaluated using a well-worn mathematical formula that awarded the lowest priced offeror the total number of available points and the other offers a percentage of the available points based on their relationship to the lowest price. Tierpoint was the lowest priced offeror with a price of \$13,300,644 and it received the full 30 points for price. CDS's evaluated price was \$57,187,911 and, using the mathematical formula, it received 7 points. The pass-through cost added to CDS's proposal amounted to \$13,545,864. If CDS's evaluated price is reduced by the amount of the pass-through costs its new evaluated price would be \$43,642,047 and it would receive 2 additional points for a total of 9 points for price.

In the original final evaluation Tierpoint was the highest ranked offer with a total of 103.4 points, IBM received 83.8 points, Ensono received 73 points, and CDS received 66.8 points. Even if CDS had not included any pass-through costs it would not have changed the relative standing of the offerors. While the comparison of price was flawed, it had no effect on the outcome of the solicitation. *See Appeal by Excent Corporation*, Panel Case No. 2013-2 (finding error that does not affect “ultimate outcome of the procurement” is harmless). This issue of protest is dismissed.

Protest Grounds 5 and 7

CDS combined protest issues 5, and 7 during the CPO’s administrative hearing and argued:

5. Tier Point's proposal is nonresponsive because Tier Point refused to provide the mandatory information required by the Solicitation in its proposal, including its Company Net Income.

7. TierPoint's proposal is non-responsive because it does not include evidence of financial stability as required by the Solicitation. It attempts to insert a recent award as evidence of financial stability and offers to provide additional information if requested. This response fails to meet the material and essential requirements of the Solicitation. The Solicitation requires explicitly under "Qualifications" (b) that the vendor "Include the most current financial statement and financial statements for the last two fiscal years." Tierpoint's proposal fails to include this mandatory information.

As stated above, a responsive bidder is one who has submitted a bid that meets all material and essential requirements of the solicitation. A requirement is not "essential" if variation from it has no, or merely a trivial or negligible effect on, price, quality, quantity, or delivery of the supplies or performance of the services being procured. The failure to provide information about a company’s net income or evidence of financial stability might be considered in determining an Offeror’s responsibility, but they are not material and essential requirements of the solicitation and are not issues of responsiveness. These issues of protest are denied.

Protest Ground 8

CDS’s eighth issue of protest alleges:

TierPoint is non-responsive because it fails to provide the Mandatory minimum insurance limits required in the Solicitation. Its proposal does not include the required coverage limits. Its policy does not provide the ten million dollars

aggregate coverage. Instead, it offers only an umbrella with a single limit coverage of \$5,000,000.00.

The Certificate of Insurance is found in Appendix F of the TPBH proposal. CDS abandoned its allegation regarding the ten-million-dollar aggregate limit and argued the proof of insurance provided in the TPBH proposal is for Blue Hill and not Tierpoint. Blue Hill is providing the technical services and the insurance. CDS relies on the arguments raised above about the relationship between TierPoint and Blue Hill in alleging that Tierpoint is not responsive to the required minimum insurance requirements. For the reasons stated in the discussion of this issue, this issue of protest was not timely raised and is denied.

Protest Grounds 6, 9, 10, and 11

CDS argued issues 6, 9, the first part of 10, and 11 together as they make similar arguments.

In issue 6 CDS argues:

6. TierPoint's proposal is non-responsive because it fails to provide an overview of the Personnel and Organization that will be assigned to this Contract as required by the Solicitation. See p. 68-69 of the Proposal.

TPBH's proposal included an organization chart that identified personnel by name, their operational responsibilities, and resumes. [TPBH Proposal, Pages 69-79] CDS argues that this information was deficient, failing to identify personnel for all the services required by the solicitation. However, the solicitation did not require the offerors to identify an employee that would be responsible for each function to be provided. The adequacy of those responses in determining TPBH's ability to perform the contract requirements is the purview of the procurement officer and evaluation committee. This issue of protest is denied.

In protest issue 9 CDS argues:

9. TierPoint's proposal is nonresponsive because it fails to contain the specific project work plan detailing all major activities and time frames for completion required by Section 3.4 of the Solicitation. Specifically, the proposal includes neither a complete project management plan nor a project schedule showing initiation and completion of all stages.

Section IV, paragraph 3.4 states:

Contractors shall provide a project work plan detailing all major activities and time frames for completion.

- a. Demonstrated understanding of sound project management principles and the capability to apply them to the work of this RFP.
- b. Description of project management structure.
- c. Complete project management plan.
- d. Project schedule showing initiation and completion of all stages.
- e. Sample Project status reports that will be provided to DTO.

TPBH provided a written response to each item “a” through “e” beginning on page 96 of its proposal and provided a lengthy discussion of its approach to project management beginning on page 56. The proposal includes a table of transition milestones identifying the milestone and duration on page 67. In addition, TPBH provided a sample transition plan identifying specific tasks and subtasks stretching over 271 line items including the duration for each item with start and end dates as Appendix D to its proposal. TPBH met the requirements of the solicitation. The adequacy of those responses in determining TPBH’s work plan and approach to project management is the purview of the procurement officer and evaluation committee. This issue of protest is denied.

Protest Ground 10

CDS next argues:

10. TierPoint's proposal is not responsive to the Productivity Improvement requirements of the Solicitation because it fails to include any internal documented statistics on productivity improvement achieved through the process it proposes to use and how those improvements will benefit the state as required by the Solicitation.

Section IV, paragraph 4.6 required:

Productivity Improvement

Instructions to Offerors: Provide internal documented statistics on productivity improvement achieved through the improved processes such as those listed above, and state how these improvements will directly benefit the State.

TPBH devoted four paragraphs to productivity improvement which included:

We understand that utilizing consistent practices for all aspects of IT services assist in driving effectiveness and efficiency, along with achieving predictable

service levels for our clients. Blue Hill embraces a quality management services model approach to ensure we are continually meeting and/or exceeding our clients' expectations. We also include flexibility required for a 100% client satisfaction.

We have provided five (5) references who will share this information with the State.

(emphasis added) [TPBH Proposal, Page 46]

While TPBH did not provide the statistics in the proposal itself, the required information was made available through its references. Further, this is an issue of evaluation, not responsiveness. This issue of protest is denied.

Protest Ground 11

11. TierPoint's proposal is nonresponsive because it fails to provide a Transition Plan schedule as required by Section 4.12.2 of the Solicitation. It offers a "Sample," but not a proposed Plan. TierPoint's proposal fails to provide the Operations and Administration Services for all in-scope mainframe assets required in Section 3.1.2 of the Solicitation.

TPBH provided a sample transition plan identifying specific tasks, 271 line items, the duration for each item, and the start and end dates. This solicitation was originally issued March of 2018 and the start and end dates begin in the late spring of 2018 and run through June of 2018. CDS argues that the solicitation required a plan that was specifically designed for this project and that the plan provided by TPBH was a sample not a commitment. This solicitation was published in March 2018, with proposals due on May 15, 2018, and an anticipated award date of June 1, 2018. Proposals were actually submitted on June 23, 2018 and the Intent to Award was actually posted on November 1, 2019. Any proposed schedule is a sample dependent on the actual contract start date. TPBH submitted a transition plan schedule.

CDS also argues that Tierpoint failed to provide the Operations and Administration Services for all in-scope mainframe assets required in Section 3.1.2 of the Solicitation arguing that Blue Hill is actually providing the services. This issue is addressed above. In addition, the solicitation did not require a point-by-point acknowledgement of each solicitation requirement. TPBH took no exception to the requirements of Section

III.A.3.1.2. In Table 68 of its response, TPBH offered two assumptions about, and took no exceptions to, the requirements in Section III.A.3 [TPBH Proposal, Page 35] TPBH responded to the requirements of the solicitation. The completeness and adequacy of that schedule is left to the judgement of the procurement officer and the evaluation committee. This issue of protest is denied.

Protest Ground 12

In protest issue 12, CDS argues:

12. Contrary to the State's specific instructions, TierPoint failed to account for the vast majority of the software the State listed and requested offerors to account for in their proposal responses. This failure rendered TierPoint's proposal nonresponsive, contributed to its inappropriately low price, and further hampered the State's ability to evaluate its costs.

This issue is addressed in the discussion of protest issue 4 and is dismissed.

Protest Ground 13

In protest issue 13, CDS argues

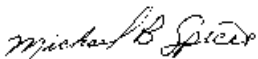
13. Additionally, Tier Point takes exception to material requirements of the Solicitation where it proposes that it and the State enter negotiations regarding the allocation of services and costs. This exception materially modifies the Solicitation and renders TierPoint's proposal non-responsive.

These issues were addressed in the discussion of protest issue 2 and are denied.

DECISION

For the reasons stated above, the protest of Companion Data Services, LLC is denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

MONTGOMERY WILLARD, LLC
ATTORNEYS AND COUNSELORS AT LAW
1002 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201
(803) 779-3500

MICHAEL H. MONTGOMERY
MHM@MONTGOMERYWILLARD.COM
DIRECT DIAL NO. (803) 753-6484

CERTIFIED CIVIL MEDIATOR

POST OFFICE Box 11886
COLUMBIA, SOUTH CAROLINA 29211-1886

FACSIMILE (803) 799-2755
WORLD WIDE WEB [HTTP://WWW.MONTGOMERYWILLARD.COM](http://www.MONTGOMERYWILLARD.COM)

November 18, 2019

BY EMAIL TO protest-mmo@mmo.sc.gov; protest-itmo@mmo.sc.gov
AND VIA HAND DELIVERY

Mr. Michael Spicer
Chief Procurement Officer
Information Technology Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

**Re: PROTEST OF AWARD OF Solicitation Number 5400014395
MAINFRAME SERVICES PROVIDER / DTO Administration
By COMPANION DATA SERVICE, LLC
Date of Issuance of Solicitation: March 15, 2018
NOTICE OF INTENT TO AWARD POSTED November 01, 2019**

Dear Mr. Spicer:

This firm represents Companion Data Services, LLC ("CDS"). CDS is an aggrieved offeror in the above-referenced solicitation. Pursuant to *S.C. Code Ann.* §11-35-4210 (2019), on November 12, 2019, CDS filed a timely protest of the award made on Solicitation Number 5400014395 (the "Solicitation"). This letter serves as CDS' amended protest of that award for the reasons articulated herein pursuant to *S.C. Code Ann.* (2019) §11-35-4210(b).

The grounds of this protest are set forth below. In accord with applicable law, this protest letter is intended to provide notice of the issues to be decided. For that reason, it does not purport to set forth all facts and evidence supporting the issues protested. CDS reserves the right and requests that the CPO issue an order providing all parties to the protest a briefing schedule and an opportunity to offer facts, evidence, and argument in support of this protest, as well as a timely administrative hearing. If, for any reason, the CPO elects not to conduct a hearing on this vital procurement, CDS requests that the CPO advise the undersigned of any deadlines for the submission of evidence and argument in support of this protest.

CDS protests the award to TierPoint, LLC. TierPoint has violated applicable law by redacting its proposal beyond the extent permitted by law as allowed by *S.C. Code Ann.* §11-35-410, making virtually all of its proposal exempt from public disclosure and exempt from review by a competitor and aggrieved proposer for compliance with the essential requirements of the

Mr. Michael Spicer
Chief Procurement Officer
November 18, 2019
Page 2

Solicitation. A study of the redacted proposal indicates that more than ninety percent of the content has been redacted, making it impossible to determine the specific areas of responsiveness and responsibility not met by TierPoint.

The excessive and illegal redactions contained in TierPoint's proposal precluded CDS from having the ability to review the proposal with only the legally allowed confidential information redacted. Obtaining the protective order one business day before the deadline for filing the amended protest only allowed CDS' attorneys to view the unredacted material on a single business day before the deadline for filing this amended protest. Therefore, CDS requests latitude in the specificity required of its protest grounds. Additionally, CDS, requests that the CPO immediately require an appropriately redacted version of the Solicitation be provided for use in the protest and that all such records, in un-redacted form, be made a part of the Record for review and that the CPO permit CDS as well as its counsel to examine the full responses of TierPoint to the proposal, about which this letter protests the intent to award.

CDS is a wholly-owned subsidiary of Blue Cross and Blue Shield of South Carolina ("BCBSSC"). BCBSSC is one of the area's largest employers and supporters of charity throughout South Carolina. The Company has worked in various capacities with the State of South Carolina for many years. BCBSSC prides itself in supplying the State and its agencies with outstanding products and services delivered by local South Carolina employees working in South Carolina. The Company's guiding principles include giving back to the communities where it operates. BCBSSC is a major supporter of community and charitable causes in Columbia and throughout the State. It also supports healthcare-related research, education, and service in South Carolina through the Blue Cross and Blue Shield of South Carolina Foundation. Forbes included BCBSSC in Forbes' Americas Best Employers List.

CDS appreciates your willingness to work with the Company in resolving its concerns. It believes that we can reach a resolution that is fair and beneficial to all parties and, most importantly, provides the complete solution and all deliverables sought by the Solicitation. CDS thanks you in advance for your consideration of this protest.

This protest is timely within the deadline set by *S.C. Code Ann.* § 11-35-4210(1)(b). MMO posted the Intent to Award on November 1, 2019, and CDS counsel emailed and hand-delivered this protest letter to the Chief Procurement Office on November 12, 2019. November 11, 2019, is a state and federal holiday, and the CPO's offices were closed. Likewise, this Amended Protest Letter is provided on the first business day after the 15th day of the posting of the Intent to Award (as the 15th day was on a Saturday).

PURPOSE OF THE SOLICITATION

The purpose of this Solicitation is to acquire data centers to provide mainframe services. The statement of work includes services and activities required to provide and support State enterprise production and non-production environments and compute, storage, and network environments. The Solicitation seeks a provider to fulfill these requirements and meet specific

service objectives enumerated in the Solicitation.

SOLICITATION BACKGROUND

MMO issued the Solicitation on March 15, 2018. Amendments were published as follows: Amendment 1: 05/07/18; Amendment 2: 05/31/2018; Amendment 3: 06/15/2018; Amendment 4: 06/27/2018; Amendment 5: (amendment five reissued and restated the entire Solicitation and replaced the Solicitation incorporating Amendments 1 -4) 07/05/2018; Amendment 6: 05/09/2019; Amendment 7: 05/20/2019 and Amendment 8: May 30, 2018. Amendments 6, 7, and 8 dealt with a requested BAFO from each of the proposers.

RELEVANT SOLICITATION PROVISIONS

RESPONSIVENESS/IMPROPER OFFERS

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

SUBMITTING CONFIDENTIAL INFORMATION (FEB 2015)

(An overview is available at www.procurement.sc.gov) For every document Offeror submits in response to or with regard to this Solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this Solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the to or Trade Secrets Act. For every document Offeror submits in response with regard to this Solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire

response (bid, proposal, quote, etc.) as confidential, trade secret, or protected. If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this Solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this Solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED." By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its agencies, officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from withholding information by the State of South Carolina or any of its agencies, that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.) [02-2A125-2]

CONTENTS OF OFFER (RFP) MODIFIED – DP

(a) Offers should be complete and carefully worded and should convey all of the information requested.

(b) Offers should be prepared simply and economically, providing a straightforward, concise description of offeror's capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of content.

(c) The contents of your offer must be divided into two (2) parts:

- **Volume I - Technical proposal**
- **Volume II- Pricing proposal**

Each part should be bound in a single volume.

**NOTE: DO NOT RETURN THE SOLICITATION IN ITS ENTIRETY;
ONLY RETURN THE REQUIRED DOCUMENTATION AS OUTLINED IN**

THE SOLICITATION.

(d) If your offer includes any comment over and above the specific information requested in the Solicitation, you are to include this information as a separate appendix to your offer. Offers which include either modifications to any of the Solicitation's contractual requirements or an offeror's standard terms and conditions may be deemed non-responsive and not considered for award.

GROUND OF PROTEST

TierPoint's proposal is nonresponsive because it fails to conform to the material requirements of the RFP set forth below. The CPO should determine that the proposal is non-responsive pursuant to *S.C. Code Ann. §11-35-1530(7)* and *S.C. Code Ann. Reg. §19-445.2095(j)(4)(b)* because the TierPoint proposal does not meet the below discussed RFP requirements in material respects.

1. TierPoint's proposal is non-responsive because it redacts information that is improperly marked as confidential or trade secret or protected. The Solicitation provides *If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, **determine it non-responsive.***

TierPoint abused redactions in an unprecedented manner. Here, the State should find Tierpoint's proposal nonresponsive based upon the fact that virtually the entire proposal is improperly redacted. The CPO has previously warned vendors about problems inherent in excess redactions. It is time for the State to take action to ensure that the vendor community follows the redaction rules, and this extreme case begs for the CPO to exercise the remedy outlined in the Solicitation – a determination of non-responsiveness. *See. e.g., Matter of Palmetto GBA, LLC, 2017-125, taking into consideration the provisions of §11-35-410, the CPO finds nothing in Xerox's response to this requirement that meets the criteria for redaction, with the possible exception of its disaster recovery site. Xerox's response to paragraph 3.2.7 was improperly redacted. See also. Matter of PS Energy Group, 2017-105*

2. TierPoint's proposal is non-responsive because it failed to bid as specified and qualified its offer subject to additional negotiations in violation of the Responsiveness section of the Solicitation. For example, rather than providing a complete proposed solution for ITIL processes as required, TierPoint's proposal contains the following language: "In order to ensure that there is a clear understanding of who will be delivering each task within the services to be provided, Blue Hill will work with the State to finalize the roles and responsibilities and who will be responsible for each." (TierPoint proposal p. 36) Similarly, on Page 37 of its Proposal, TierPoint refers to a "Sample Roles and Responsibility Matrix," which is not a commitment to provide services as required by the Solicitation. This expressly qualifies the Solicitation, which specifies precisely the roles to be provided by the successful offeror. Likewise, in the Configuration Management

section of its proposal, TierPoint comments “Blue Hill and the State will agree on a formal change process and methodology for delivering this information in advance.” (Proposal p.39) Again, this qualifies the proposal making it contingent on some future and undefined negotiation.

3. TierPoint’s proposal is not responsive because it fails to affirm that it will fulfill the services requirements and responsibilities to be provided by the Contractor as enumerated in the Solicitation.

4. Tierpoint failed to include the total cost to the State in violation of the Solicitation requirements because its proposal represents that it will provide all required hardware and IBM software for the solution, and its response to the BAFO excludes needed software licenses. TierPoint proposes to leave third party software and IBM (IPLA) software with the State as a “pass-through.” Its BAFO does not account for these “pass-through” costs. The TierPoint BAFO accounts for \$348,000.00 worth of annual software licensing. The information provided by the State suggests that the total software subscriptions, not including the IBM licensing fees, exceed \$2,400,000.00 per year. Thus, the total cost to the State was not included in the proposal and not evaluated. It appears that this resulted in TierPoint’s pricing for the five years evaluated being understated by approximately \$12,000,000.00 which would have affected the outcome of the Solicitation.

5. TierPoint’s proposal is nonresponsive because TierPoint refused to provide the mandatory information required by the Solicitation in its proposal, including its Company Net Income.

6. TierPoint’s proposal is non-responsive because it fails to provide an overview of the Personnel and Organization that will be assigned to this Contract as required by the Solicitation. See p. 68-69 of the Proposal.

7. TierPoint’s proposal is non-responsive because it does not include evidence of financial stability as required by the Solicitation. It attempts to insert a recent award as evidence of financial stability and offers to provide additional information if requested. This response fails to meet the material and essential requirements of the Solicitation. The Solicitation requires explicitly under “Qualifications” (b) that the vendor “Include the most current financial statement and financial statements for the last two fiscal years.” Tierpoint’s proposal fails to include this mandatory information.

8. TierPoint is non-responsive because it fails to provide the Mandatory minimum insurance limits required in the Solicitation. Its proposal does not include the required coverage limits. Its policy does not provide the ten million dollars aggregate coverage. Instead, it offers only an umbrella with a single limit coverage of \$5,000,000.00

9. TierPoint’s proposal is nonresponsive because it fails to contain the specific

project work plan detailing all major activities and time frames for completion required by Section 3.4 of the Solicitation. Specifically, the proposal includes neither a complete project management plan nor a project schedule showing initiation and completion of all stages.

10. TierPoint's proposal is not responsive to the Productivity Improvement requirements of the Solicitation because it fails to include any internal documented statistics on productivity improvement achieved through the process it proposes to use and how those improvements will benefit the state as required by the Solicitation. TierPoint fails to provide the Mainframe Service Descriptions and Roles and Responsibilities required in Section 3.1 of the Solicitation.

11. TierPoint's proposal is nonresponsive because it fails to provide a Transition Plan schedule as required by Section 4.12.2 of the Solicitation. It offers a "Sample," but not a proposed Plan. TierPoint's proposal fails to provide the Operations and Administration Services for all in-scope mainframe assets required in Section 3.1.2 of the Solicitation.

12. Contrary to the State's specific instructions, TierPoint failed to account for the vast majority of the software the State listed and requested offerors to account for in their proposal responses. This failure rendered TierPoint's proposal nonresponsive, contributed to its inappropriately low price, and further hampered the State's ability to evaluate its costs.

13. Additionally, TierPoint takes exception to material requirements of the Solicitation where it proposes that it and the State enter negotiations regarding the allocation of services and costs. This exception materially modifies the Solicitation and renders TierPoint's proposal non-responsive.

CDS further intends to protest on such other grounds as are identified after receipt of an appropriately redacted proposal unless the CPO determines that an appropriate sanction for TierPoint's gross abuse of the process is a finding that the proposal is non-responsive on that basis alone.

CDS reserves fully its rights to amend this protest letter in accord with the statute and to seek additional remedies and sanctions based upon TierPoint's violation of the redaction rules.

In light of the issues raised herein, CDS requests the following relief:

- That the CPO suspend the award and honor the statutory stay.
- That because of the size of the record, complexity of the issues and profound impact of this procurement on the citizens of the State, the CPO convene and conduct a

hearing to allow the examination of relevant witnesses and the opportunity for the Protestant to provide a detailed explanation of the issues presented, particularly as it relates to the contract deliverable items and their impact on performance.

- That the CPO issue an Order finding TierPoint non-responsive consistent with the Solicitation based upon its abuse of the redaction rules and the remedy allowed in the Solicitation.
- That the CPO issue an Order finding TierPoint non-responsive to the essential requirements of the Solicitation.
- That the CPO issue its Order terminating the award to TierPoint and requiring re-Solicitation of the Procurement.
- That the CPO issue its Order granting Protestant such other and further relief as the CPO deems just and proper.

CDS appreciates the CPO's consideration of this protest. We respectfully request that the CPO conduct an administrative review and that as a part of that review, the CPO grant CDS a hearing. The entire picture cannot be understood absent an opportunity to examine the witnesses to inform and educate the CPO about the Solicitation, the material requirements, and the process employed in evaluating this Solicitation. After the hearing, we would request that the CPO issue an Order granting CDS the relief sought.

If the CPO determines not to conduct a hearing, CDS respectfully requests an opportunity to present additional detail as to TierPoint's non-responsiveness, the failure of the evaluation process, evidence to support the grounds of this protest and legal argument by way of a briefing schedule.

Upon completion of the administrative review, CDS requests that the CPO cancel the award and order the State to re-solicit the entire procurement because of the myriad of flaws and violations of the Code and Panel Decisions implicit in this process.

Sincerely,

MONTGOMERY WILLARD, LLC



Michael H. Montgomery

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2018)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 111.1 of the 2018 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.