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Protest Decision

Matter of: Flywire Payments Corporation

Case No.: 2020-217

Posting Date: July 10, 2020

Contracting Entity: University of South Carolina

Solicitation No.: USC-RFP-3623-CH

Description: Provide International Student Tuition and Fee Payment Solutions

DIGEST

A protest alleging short procurement cycle and superior product is denied. The protest letter of Flywire Payments Corporation 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

Solicitation Issued
Amendment One Issued

06/03/2019
06/16/2019

Bids Opened	06/23/2020
Intent to Award Posted	06/26/2020
Protest Received	07/06/2020

This Request for Proposals was issued by the University of South Carolina (USC) to acquire an International Student Tuition and Fee Payment Solution on June 3, 2020. Amendment 1 was issued on June 16, 2020 answering bidder's questions. Proposals were opened on June 23, 2020 at 11:00 AM. An Intent to Award was posted to MTFX USA, Inc. dba PayMyTuition on June 26, 2020. Flywire filed a protest of the award with the CPO on July 6, 2020, alleging:

Accordingly, Flywire is protesting the selection of the awarded vendor on the following grounds:

- RFP Process: Timing and execution of RFP, lack of ability to present
- Student Payment Platform Capabilities: Based on wire payment history to University, Flywire more qualified to serve University's student population
- Experience, Qualifications, and References: Flywire's credentials and reputation match our claims and are superior (number of clients/history/number of employees/reviews)

ANALYSIS

Flywire's first issue of protest relates to the amount of time provided to prepare proposals and the amount of time allocated for evaluation:

Further, while it is true all vendors would have similar time constraints, twelve business days was insufficient time to provide the University with the best possible response. The university's decision to require hard copies delivered during the course of the current globally pandemic further reduced the available time to complete the process.

Finally, the amount of time allotted to review and score competing responses, seek any clarification, observe a demonstration of capabilities, and check provider references, does not seem in line with similar RFPs conducted.

The solicitation was published on June 3, 2020, and the cover page solicitation included the following statements:

SUBMIT OFFER BY (Opening Date/Time): Tuesday, June 23, 2020 at 11:00 AM (EST)

Award will be posted on 6/26/2020. The award, this solicitation, any amendments, and any related notices will be posted at the following web address:
<http://purchasing.sc.edu>

[Solicitation, Cover Page]

These statements were repeated on the cover page of Amendment 1 without alteration. Section 11-35-4210(1)(b) provides:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(emphasis added)

These issues could have been raised as a protest of the solicitation within fifteen days of the issuance of the solicitation but cannot be raised as a protest of the award. These issues of protest are dismissed.

Flywire next protest:

In spite of being a “responsive Offeror”, Flywire was not provided the opportunity to present our solution in accordance with Section 2. Please see the time stamped delivery receipt of our response in the Appendix of this document. We believe having the RFP committee compare and contrast live demonstrations could have altered the ultimate scoring and resulting award.

The solicitation provided:

*****A 30-minute demonstration of proposed product via “live” web demonstration will be requested of all responsive Offerors. The demonstration must show the entire process from start to finish from both the student user and Bursar’s Office perspectives. Demonstrations will be held Thursday, June 25th and/or Friday, June 26th. Responsive Offerors will be notified via email of the exact day and time slot for the demo.*****

[Solicitation, Page 17] (emphasis in original)

Flywire included the following statement in its proposal:

Further to question 12 of Amendment 1 and the RFP Section “Discussions and Negotiations - OPTIONAL”, should Flywire be selected as the highest ranked Offerer, we would require to enter into discussion and negotiation with the University regarding the University’s Terms and Conditions as they appear in the solicitation. At present Flywire cannot agree to all of the terms.

(emphasis added) [Flywire Proposal, Page 78]

Question and answer 12 of Amendment 1 provides:

12. Bid/Proposal As Offer to Contract Pg. 3 - Will there be an opportunity to negotiate the terms of a definitive agreement with the University?

ANSWER: *Please see Sections “Bid/Proposal as Offer to Contract” on page 3 and “Discussions and*

Negotiations – OPTIONAL” on page 22 of the Solicitation.

THE RFP IS AMENDED TO ADD THE FOLLOWING PROVISION:

LEGAL AGREEMENTS INCLUDED WITH BIDS MUST BE CLEARLY LABELLED “SAMPLE”

Every page of legal agreement(s) that Offeror expects the University to sign in order to do business with Offeror, Offeror’s terms and conditions, and/or similar type legal documents pursuant to potential contract award that Offeror chooses to include with its proposal must be clearly labelled “SAMPLE”. If Offeror’s proposal is the highest ranked offer from the evaluation process for the solicitation, then the University will consider the legal documents pursuant to potential contract award that the Offeror included with its proposal and clearly labelled “SAMPLE”.

[Amendment 1, Page 5]

The provisions referenced in the amendment put bidders on notice:

BID / PROPOSAL AS OFFER TO CONTRACT (JAN 2004)

By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; “joint bids” are not allowed. [02-2A015-1]

(emphasis added) [Solicitation, Page 3]

DISCUSSIONS AND NEGOTIATIONS – OPTIONAL (FEB 2015)

Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. [11-35-1530(6); R.19-445.2095(I)] If improper revisions are submitted during discussions, the State may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. The State may also elect to conduct negotiations, beginning with the highest ranked Offeror, or seek best and final offers, as provided in Section 11-35-1530(8). Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal. [06-6058-1]

(emphasis added) [Solicitation, Page 22]

The solicitation also puts bidders on notice:

RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)

(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)]

(emphasis added) [Solicitation, Page 8]

A responsive bidder or offeror is defined in Section 11-35-1410(9) as:

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

Flywire's proposal was not an offer to contract but an offer to negotiate. The offer to contract is a material requirement of the solicitation, and the procurement officer disqualified Flywire's proposal as non-responsive. (Attachment 2) Consequently, Firewire was ineligible to demonstrate its product. This issue of protest is denied.

Flywire's last two issues of protest claim that it has a superior product.

- Student Payment Platform Capabilities: Based on wire payment history to University, Flywire more qualified to serve University's student population
- Experience, Qualifications, and References: Flywire's credentials and reputation match our claims and are superior (number of clients/history/number of employees/reviews)

Section 11-35-2410(1) provides that the evaluation and ranking of proposals is final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law. The Procurement Review Panel visited this Section of the Code in *In Re: Protest of Santee Wateree Regional Transportation Authority; Appeal by Santee Wateree Regional Transportation Authority*, Case 2000-5 and reached the following conclusion:

The Panel has held numerous times that this section dictates that the Panel will not re-evaluate proposals and will not substitute its judgment for the judgment of the evaluators. See, e.g., *Protest of Travelsigns*, Case No. 1995-8; *Protest of First Sun EAP Alliance, Inc.*, Case No. 1994-11; *Protest of NBS Imaging Systems, Inc.*, Case No. 1993-16; and *Protest of Coastal Rapid Public Transit Authority*, Case No. 1992-16.

In the *Coastal Rapid Public Transit Authority* case, the Panel established the basic framework for review of challenges to evaluators' conduct:

The determination by the State who is the most advantageous offeror is final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law The burden of proof is on [the protestant] to demonstrate by a preponderance of the evidence that the determination in this case has such flaws The Panel will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased.

The Panel has held that the evaluation process does not need to be perfect so long as it is fair. *NBS Imaging Systems, Inc.*, cited above. Further, because the Panel will not re-evaluate proposals or substitute its judgment for that of the evaluators, the Panel has held that a claim of superiority by a vendor in certain areas of evaluation, however valid, does not compel the finding that the vendor is the most advantageous to the State. See, *Protest of First Sun EAP Alliance, Inc.*, and *Protest of Coastal Rapid Public Transit Authority*, cited above.

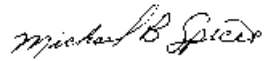
Flywire only claims to be a superior company with a superior product and makes no claim and provides no evidence that the evaluation was flawed. These issues of protest are denied.

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Case No. 2020-217
July 10, 2020

DECISION

For the reasons stated above, the protest of Flywire Payments Corporation is denied.

For the Information Technology Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer
Chief Procurement Officer



July 6th, 2020

Dear Venis Manigo and others it may concern,

After years of contemplating and then months of planning, the University of South Carolina undertook a competitive process to select a long-term partner to serve both the University's students and administrative stakeholders. These projects are never entered into lightly, especially in the midst of a global pandemic. While the pressure of the task was immense during the short 12 business day timetable for responding vendors, I'm sure it was doubly so for the RFP panel who had to evaluate, score, and check references to arrive at a decision in just over three days' time.

In both written and PPT form, I suspect that even the most seasoned industry expert would have a hard time differentiating between such similarly described and operated platforms. Everyone is putting their best foot forward, drenched in hyperbole, accolades, inflated or otherwise real, well inserted. However, moving past any claims and boasts to the contrary, we believe Flywire would be able to demonstrate that our solution is superior in every key category. Unfortunately we were not given an opportunity to demonstrate our capabilities.

International student populations within the US are particularly vulnerable because of current political and global health factors. Ensuring that international students and University staff have access to an established and dependable platform is paramount in the months and years ahead. It is vital that the University does not lose the opportunity to have all of the information available to make the most informed decision.

Accordingly, Flywire is protesting the selection of the awarded vendor on the following grounds:

- RFP Process: Timing and execution of RFP, lack of ability to present
- Student Payment Platform Capabilities: Based on wire payment history to University, Flywire more qualified to serve University's student population
- Experience, Qualifications, and References: Flywire's credentials and reputation match our claims and are superior (number of clients/history/number of employees/reviews)

We will elaborate on each point in the sections below. Where it makes sense, we have inserted screenshots and/or charts to support the argument. Where necessary and to assist with the brevity of this document, additional supporting material has been provided in a supplemental Appendix. We greatly appreciate your time and consideration in this matter.



RFP Process

In spite of being a "responsive Offeror", Flywire was not provided the opportunity to present our solution in accordance with Section 2. Please see the time stamped delivery receipt of our response in the Appendix of this document. We believe having the RFP committee compare and contrast live demonstrations could have altered the ultimate scoring and resulting award.

Further, while it is true all vendors would have similar time constraints, twelve business days was insufficient time to provide the University with the best possible response. The university's decision to require hard copies delivered during the course of the current globally pandemic further reduced the available time to complete the process.

Finally, the amount of time allotted to review and score competing responses, seek any clarification, observe a demonstration of capabilities, and check provider references, does not seem in line with similar RFPs conducted.

Student Payment Platform Capabilities

According to the data provided in Amendment 1, issued on June 16th, the following three countries of origin consistently produce approximately 70% of all wire volume received by the University of South Carolina: China, India, Vietnam. Only Flywire provides a local banking and online option for all three countries. The selected vendor does not offer a local option for Vietnam. Screenshots of each company's payment methods for these three countries as of the week of June 29th are attached in the Appendix. This can be verified by navigating to the following websites and entering the desired country of payment:

<https://auburn.flywire.com>

<https://www.paymytuition.com/paynow/auburn>

Further, Flywire maintains redundant in-country partners for all methods available for China and India, as well as the card options for Vietnam. A redundant local banking option for Vietnam is in process. This provides Flywire clients with a greater confidence in platform availability for students in these critical countries of origin.

Lastly, only Flywire has in-country and in-region customer service, including supporting students in China from both our Shanghai and Singapore offices. This ensures students and families have local experts available at critical payment times.

The advantages of Flywire's global payment network extend well past the top three countries of concern to the University and we would welcome the opportunity to expound on this section.

Experience, Qualifications, and References

The RFP stated the University desired to work with an established provider with experience providing an international student payment solution in situations of similar size and scope. On the date of award, Flywire led this category 101-3 for peer institutions in the United States.

Flywire is the leading provider of international student payments globally, serving over 2,000 campuses globally, including over 1,100 partner educational institutions in the United States. This claim can easily be validated by visiting <https://www.flywire.com/select-institution>. In the US, the University will find 101 four-year universities with over 20,000 enrollment.



As of July 6th, research finds only 4 of the competing vendor's 68 US partner institutions have an enrollment of over 20,000 students. By visiting <https://www.paymytuition.com> and clicking "Make A Payment", the University will only find DeVry University (live early '17), Utah State (live Nov '18), Auburn University (live Dec '19) and University of Pennsylvania (July 1st, 2020). Note that University of Pennsylvania did not go live with the competitor until July 1st, 2020 because of the University's exclusive contract with Flywire. [Another 67 Canadian institutions, producing two additional universities of over 20,000 enrollment will be viewable on the client list. All of these will perform and operate differently based on Canadian immigration law.]

Searching Google for school partners of both providers further underscores Flywire's superior experience and qualification. Searching where other higher ed institutions promote the use of Flywire on their .edu websites will return almost 23,000 results. The same search for PayMyTuition only returns 186 results.

This search can be replicated by:

1. Navigate to Google.com
2. Copy and paste the following, including quotation marks: "flywire" site:*.edu
3. Repeat by replacing Flywire's name with the alternative vendor

Flywire also has a much more extensive experience and history of providing integration into Banner. Miami University Ohio was our first SFTP file Banner integration in the summer of 2011. Today, Flywire has various levels of Banner integration at over 80 schools that the University could check the references of. Our research suggests the selected vendor has not even reached double digit Banner integrations. We also believe that all but one of the selected vendor's Banner integrations (DeVry) have gone live in the last 6-7 months.

Conclusion


The RFP committee's inability to compare live demonstrations of the competing solutions left it without valuable information that could have swayed the outcome of the RFP. As can be easily verified on publicly available websites, Flywire is also the vendor with the local capabilities the University's international students will require, along with the more established history of providing the desired services. Accordingly, it is Flywire's desire to protest the current award. At minimum, we believe the RFP committee should review live demonstrations of the competing solutions before finalizing their decision.

Thank you for your time and consideration,

Tom Metcalf
VP Sales, North America
Flywire



MEMORANDUM

DATE: June 23, 2020
TO: File
FROM: Caleisha Hayes 
RE: Flywire Payments Corp. Proposal Deemed Nonresponsive

On June 23, 2020, Solicitation #USC-RFP-3623-CH (Provide International Student Tuition and Fee Payment Solutions) was opened by a Purchasing Department Bid Clerk. After the opening I received responses submitted by four Offerors, one of which was Flywire Payments Corp. (hereinafter "Flywire"). In its response, Flywire submitted: Section 1: Signed Cover Pages 1 and 2, along with a Submittal Letter; Section 2: Technical Proposal; Section 3: Experience, Qualifications & References; and Section 4: Attachments and Additional Items.

In determining the responsiveness of the proposal submitted by Flywire, I saw that in addition to the requested information, the Offeror also included in Section 4 of its proposal: its boilerplate International Payment Processing Agreement (watermarked "Sample") and the following statement on page 78:

5. "Bid/Proposal as Offer to Contract" and "Discussions and Negotiations - OPTIONAL"

TRADE SECRET

Further to the University's responses to question numbers 12, 13, 14 and 15 in Amendment 1, please see enclosed overleaf Flywire's International Payment Processing Agreement marked as "SAMPLE" on each page.

Without waiving any rights to respond to or be considered for this RFP, please note that Flywire is submitting a proposal on specific, regulated products and if the Flywire proposal is successful, it may be necessary to amend the terms between the parties in good faith such that the parties transact in a manner compliant with relevant state and federal laws relating to the contracted services.

Further to question 12 of Amendment 1 and the RFP Section "Discussions and Negotiations - OPTIONAL", should Flywire be selected as the highest ranked Offerer, we would require to enter into discussion and negotiation with the University regarding the University's Terms and Conditions as they appear in the solicitation. At present Flywire cannot agree to all of the terms.

END OF TRADE SECRET

Regulation 19-445.2095. Competitive Sealed proposals, Section J. Rejection of Individual Proposals, Subsection (1) states: Proposals need not be unconditionally accepted without alteration or correction, and to the extent otherwise allowed by law, the State's stated requirements may be clarified after proposals are submitted. ..Reasons for rejecting proposals include but are not limited to: (b) the proposal ultimately (that is, after an opportunity, if any is offered, has passed for altering or clarifying the proposal) fails to meet the announced requirements of the State in some material respect.

Further, the Solicitation contains in Section II. Instructions to Offerors – A. General Instructions, the following provision:

RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)

(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)]

Since Flywire has conditioned its response to Solicitation #USC-RFP-3623-CH, I have deemed the proposal submitted by Flywire to be “non-responsive” and removed it from further consideration.

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.