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## Protest Decision

**Matter of:** AT&T Corporation

**Case No.:** 2021-203

**Posting Date:** February 12, 2021

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400018151

**Description:** Aftermarket Fleet Telematics System

### DIGEST

Protest that the evaluation of price was flawed is granted. The protest letter of AT&T Corporation (ATT) 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:	08/15/2019
Amendment 1 Issued	09/18/2019
Amendment 2 Issued	10/07/2019
Amendment 3 Issued	10/16/2019
Intent to Award Posted	09/11/2020
Intent to Protest Received	09/22/2020
Protest Received	09/28//2020

The State Fiscal Accountability Authority (SFAA) issued this Request for Proposals on August 15, 2019 to establish a statewide term contract for the acquisition of a comprehensive vehicular telematics solution to include hardware, firmware, a web-accessed portal, and cloud-based storage. Five proposals were received on November 7, 2019. Proposals were evaluated against three evaluation criteria published in Amendment 3 to the solicitation:

### **1. Technical Proposal (0-55 points)**

#### *4.1.1 and 4.1.2 of Technical Proposal*

Offeror's proposed solution as a whole, each individual component, and the ancillary services offered to best meet the needs of the State.

### **2. Qualifications and Experience (0-25 points)**

#### *4.1.3 and 4.1.4 of Technical Proposal*

- Demonstrated ability to provide its solutions and services
- Offeror's degree of compatibility with fleet management software, ESRI, and OEM-equipped telematics devices
- Proportion of services provided within the continental United States

### **3. Price Proposal (0-20 points)**

In calculating the price proposal points, the proposal with the lowest Total Evaluated Price in Exhibit A receives the maximum points allowed. All other proposals receive a percentage of the points available based on their price relationship to the lowest. This is determined by applying the following formula:

$$(\text{Lowest Price} \div \text{Price Being Evaluated}) \times \text{Maximum Price Points Available} = \text{Awarded Price Points}$$

[Amendment 3, Page31]

Five evaluators scored the technical merit and qualifications and experience of each proposal. At this point, ATT was the highest ranked offeror with 378 points, Go Fleet Corporation was second with 330 points, and GPS Insight (GPS) was third with 318 points. Pricing was submitted by

way of a spreadsheet attached to the solicitation as Exhibit A. Instructions for completing the price proposal were found in Section VIII of Amendment 3:

**SUBMIT THE PRICE PROPOSAL AND TECHNICAL PROPOSAL AS SEPARATE DOCUMENTS.**

Offeror must submit all requested pricing components within a given Lot in order for Offeror's proposal to be deemed responsive for that Lot.

Complete and submit Exhibit A in Excel format as the Price Proposal. Every price entered in Exhibit A must be a single dollar amount, as outlined below, that represents the final price, inclusive of all proposed features, functionalities, and applicable ancillary services.

**Monthly Price per Asset** must be the total price inclusive of all subscription fees, secure cloud storage fees, etc. for the proposed solution.

**Monthly Price for OEM Redirect per Asset** must be the total additional price for ongoing data transfer from OEM device into proposed solution's platform and secure cloud storage.

**One-Time Price per Asset** must be the price for the physical device including all necessary ancillary connectors for the proposed solution.

**One-Time Price per Asset - Installation\*** must be the total price for delivery of the device to the UGU's site and installation on the applicable asset by Contractor, at UGU's election.

**One-Time Price per Asset - Shipping\*** must be the total price for delivery of the device to the UGU's site. This price cannot exceed shipping rates established by SC Contract for Small Package Delivery.

**One-Time Price for OEM Redirect per Asset** must be the total price for initial setup of the ongoing data transfer from OEM device into proposed solution's platform and secure cloud storage.

\*UGUs will select either "One-Time Price per Asset - Installation" or "One-Time Price per Asset - Shipping" in their sole discretion.

[Amendment 3, Page 51]

The spreadsheet contained hidden, password protected, fields that calculated a Total Evaluated Price that would be used to determine the points awarded for price. The formula added 70% of the first month's recurring costs to 30% of the one-time costs for each of three categories of equipment: Powered Assets, Limited-Purpose Assets, and Non-Powered Assets. The one-time costs were subdivided into four subcategories: price per asset, installation per asset, shipping per

asset, and OEM redirect per asset. Since the formula was concealed, offerors could not readily discern how the Total Evaluated Price would be calculated.

All five offerors submitted monthly recurring prices. Four offerors submitted prices for one-time costs. GPS submitted the highest monthly recurring prices for each of the three categories and no charge for any of the one-time costs, with an explanation similar to the following for each category:

Price per Asset below includes hardware device, monthly service, professional installation, and shipping inside bundled pricing of \$21.95/month per asset. \$0.00 upfront costs to implement GPS Insight. Note, GPS Insight installation is defined in detail under our standard Installation Terms & Conditions

Nothing in the solicitation prohibited an offeror from amortizing the one-time costs in its monthly price.

With no one-time costs, GPS had a significantly lower Total Evaluated Price and, based on the formula for the allocation of points for price and was awarded the maximum points available for price. The other offerors received points base on the relationship between their price and that of GPS. The points awarded for price were multiplied by 5 and added to the points awarded for the first two evaluation criteria after which GPS was the highest ranked offeror with 418 points and ATT was second with 412 points as follows:

<b>Evaluator #</b>	<b>AT&amp;T Corporation</b>	<b>Fleet Analytics</b>	<b>GoFleet Corporation</b>	<b>GPS Insight</b>	<b>Samsara Networks</b>	
Evaluator 1	75	30	55	40	45	
Evaluator 2	75	55	70	73	68	
Evaluator 3	73	55	68	74	66	
Evaluator 4	79	28	63	61	62	
Evaluator 5	76	55	74	70	72	
Subtotal	378	223	330	318	313	
Price Points	6.984007996	6.710684274	7.806172322	20	7.696544128	
X5	34.92003998	33.55342137	39.03086161	100	38.48272064	
Total	412.92004	256.5534214	369.0308616	418	351.4827206	

An Intent to Award was posted to GPS on September 11, 2020, with a total potential value of \$5,000,000. ATT filed a timely intent to protest with the CPO on September 22, 2020, followed by a timely protest on September 28, 2020 alleging that the price evaluation was flawed.

## ANALYSIS

At its core, ATT protests that the hidden formula for determining the total evaluated price resulted in a price evaluation that lacked a rational basis. ATT argues:

As a result of GPS' failure to comply with the RFP instructions, there is no simple apples-to-apples comparison between AT&T's price (with a lower monthly price but a one-time install) and GPS' price (with a higher monthly price, but no upfront cost). The State's formula for evaluating the two prices unfairly penalized vendors like AT&T who complied with the RFP instructions, allowing GPS to benefit from its decision to load hardware and installation costs into the monthly price. The State's price evaluation failed to take adequately into account the real benefit in terms of lower costs to the State resulting from AT&T's lower monthly charge. It also failed to take into account the cost savings available to UGUs which opt for self-installation of devices.

The longer a UGU continues to receive service on a particular device, the better AT&T's lower monthly pricing looks compared to GPS'. The proposed contract is for a five-year term. Some UGUs may not keep the service for the entire five years, but there is every reason to believe that the majority of UGUs would keep their service in place for something close to five years, and certainly more than a single year. But even if a UGU were to only keep its service in place for a single 12-month period, the Pricing disparity between AT&T and GPS becomes much closer.

This becomes clear if one were to spread AT&T's One-Time Costs over a 12-month term, bundling them into its Monthly Charges as GPS did. AT&T's Total Evaluated Price becomes more in line with that of GPS. See 12-month Amortization Spreadsheet prepared by AT&T for this protest, Attachment D. On the assumption that a UGU's service is kept in place only twelve months, the Total Evaluated Price for AT&T's service becomes \$60.76, instead of the \$160.08 indicated.

When this revision is applied to the State's *Proposal Tabulation*, AT&T becomes the clear winner – even if assuming that UGU's service will only be kept in place for 12 months. Based on the State's initial tabulation, AT&T received a total score of 412.92, whereas GPS had a score of 418 and thus won the RFP. Had the State evaluated AT&T's Total Evaluated Price at \$60.76, instead of \$160.08, AT&T's score increases to 470, which is 52 points higher than GPS' score of 418. See AT&T's Proposed Re-Calculated Worksheet, attached as Attachment E. Thus, AT&T would have been the clear winner.

The above calculation assumes a 12-month service retention period. If in fact UGUs were to keep their devices the entire 60 months, the total Contract term, so that AT&T's One-Time Charge is amortized over the entire 60 months, AT&T's

Total Evaluated Price drops down to \$39.32, well below GPS' Total Evaluated Price of \$55.90. See AT&T's 60-Month Amortization Spreadsheet, Attachment F. Thus, the State has a significant opportunity to save money by selecting AT&T's solution over that of GPS.

The Procurement Code says nothing about how prices must be compared in a competitive procurement. However, whatever process is selected, it must have a rational basis. To quote the Procurement Code, the evaluation may not be "arbitrary." Section 11-35-2410. Here, the process for conducting a price comparison had two parts. First, the solicitation established that price would have a weight of 20 points. Second, a formula would allocate those points based on the difference between the price being "evaluated" and the lowest price offered. The lowest price received the maximum points available and others received the same portion of the maximum points as their relationship to the lowest price. In other words, the State chose to compare price using a mathematical formula that allocated points on a proportional basis. A proportional allocation of points based on a mathematical formula is only rational if the price entered into that formula provides a common basis for the price comparison. Stated simply, the prices compared must be apples-to-apples prices.

If the evaluation compares prices that are based on differing assumptions, i.e., an "apples and oranges" comparison, it is not a meaningful comparison. *Red River Computer Company, Inc.*, B-414183.4, B-414183.6, B-414183.7, 2017 CPD ¶ 157 (2017). Permitting offerors to choose whether or not to include in their quotations a price for one-time charges, or to amortize those charges in monthly fees, does not provide a basis for the cost of each vendor's approach to be meaningfully compared. *Symplcity Corporation*, B-291902, 2003 CPD ¶ 89 (2003). Even if a price evaluation is consistent with the RFP, an evaluation is flawed if it results in an improper "apples and oranges" comparison. *Laboratory Corp. of America Holdings v. U.S.*, 116 Fed. Cl. 643, 651-2 (2014). Had every vendor structured their pricing as anticipated, the spreadsheet formula would have produced a number suitable for an apples-to-apples comparison using the scoring formula. In light of how bidders – specifically GPS – structured their pricing, neither the calculation of evaluated price nor the allocation of points by the scoring formula affords a rational basis for comparing prices.

While the total potential duration of the contract is 60 months, the Total Evaluated Prices only included 70% of the first month’s recurring cost and 30% of the one-time costs. There is no explanation for this allocation in the solicitation, and because the actual formula was password-protected, it could not be readily discerned from the solicitation or its bid schedule spreadsheet.

The five offerors submitted the follow pricing:

Offeror	GPS Insight	AT&T Corporation	Fleet Analytics	Go Fleet Corporation	Samsara Networks
<i>Recurring Costs</i>					
Part A - Powered Assets	\$ 28.95	\$ 28.00	\$ 15.00	\$ 16.50	\$ 20.00
Part B - Limited Purpose Assets	\$ 28.95	\$ 20.52	\$ 15.00	\$ 16.50	\$ 9.00
Part C - Non-Powered Assets	\$ 21.95	\$ -	\$ 12.00	\$ 10.20	\$ 5.00
<i>One-Time Costs</i>					
Part A - Powered Assets	\$ -	\$ 212.75	\$ 201.00	\$ 141.59	\$ 227.25
Part B - Limited Purpose Assets	\$ -	\$ 129.50	\$ 171.00	\$ 65.00	\$ 157.25
Part C - Non-Powered Assets	\$ -	\$ 117.18	\$ 146.00	\$ 255.00	\$ 47.25

Applying the hidden formula yields the following total evaluated prices:

Offeror	GPS Insight	AT&T Corporation	Fleet Analytics	Go Fleet Corporation	Samsara Networks
<i>70% of Recurring Costs</i>					
Part A - Powered Assets	\$ 20.27	\$ 19.60	\$ 10.50	\$ 11.55	\$ 14.00
Part B - Limited Purpose Assets	\$ 20.27	\$ 14.36	\$ 10.50	\$ 11.55	\$ 6.30
Part C - Non-Powered Assets	\$ 15.37	\$ -	\$ 8.40	\$ 7.14	\$ 3.50
<i>30% of One-Time Costs</i>					
Part A - Powered Assets	\$ -	\$ 63.83	\$ 60.30	\$ 42.48	\$ 68.18
Part B - Limited Purpose Assets	\$ -	\$ 38.85	\$ 51.30	\$ 19.50	\$ 47.18
Part C - Non-Powered Assets	\$ -	\$ 35.15	\$ 43.80	\$ 76.50	\$ 14.18
<b>Total Evaluated Price</b>	<b>\$ 55.90</b>	<b>\$ 171.79</b>	<b>\$ 184.80</b>	<b>\$ 168.72</b>	<b>\$ 153.33</b>

By its own submission, GPS amortized its one-time costs over the 60-month term of the contract by including it in the recurring costs. In other words, a single month of GPS’s “recurring cost” price includes one-sixtieth, or less than two percent, of the one-time costs. And since the Total

Evaluated Price only included 70% of the first month's recurring costs, it reflected less than 1.2% of the one-time costs, not the 30% assumed by the calculation. By calculating the total evaluated price in this way, a meaningful comparison of prices became impossible. It also resulted in a total evaluated price for the one offeror who used a different pricing model that was barely one-third of the next lowest evaluated price.

## **DECISION**

Because the State's methodology for evaluating prices lacked a rational basis, the protest of ATT Corporation is granted, and the award to GPS Insight is cancelled. Since it is not possible to determine comparable prices for each of the offerors based on the current proposals, the procurement is remanded to the Procurement Services Division of the State Fiscal Accountability Authority for re-solicitation in accordance with the Code.

## **CONCLUSION**

To the maximum extent practicable, the prices evaluated in a competitive procurement must reflect the total cost of ownership. Even if it is not practical to require offerors to propose a total cost of ownership, the evaluation must treat all elements of the cost to the State. It cannot consider the price for one part of the services or supplies while ignoring another. This principle finds its voice in our regulations: The State's published description of its needs—the specifications—must "tak[e] into account, to the extent practicable, the cost of ownership and operation as well as initial acquisition costs." S.C. Code Ann. Reg. 19-445.2140B. Price evaluation must have a reasonable relationship to the actual costs of the service and should result in a reasonably accurate prediction as to which firm's proposal will in fact result in the lowest cost to the agency. That did not happen here.

Not only was the State's calculation of total evaluated price arbitrary, as applied here it resulted in a poor business decision. The State awarded a contract to an offeror whose proposed solution was neither the highest ranked technically, nor the lowest priced. If the price evaluation had included the actual prices bid for the first year of the contract, GPS would not have been the

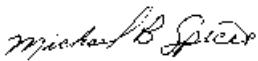


lowest priced offeror. By the end of the second year GPS’s price would exceed all four of the other offerors. And the longer the contract runs, the worse the deal gets for the State:

	<b>Offeror</b>	<b>GPS Insight</b>	<b>AT&amp;T Corporation</b>	<b>Fleet Analytics</b>	<b>Go Fleet Corporation</b>	<b>Samsara Networks</b>
12 months total cost		\$ 958.20	\$ 1,041.67	\$ 1,022.00	\$ 979.99	\$ 839.75
24 months total cost		\$ 1,916.40	\$ 1,623.91	\$ 1,526.00	\$ 1,498.39	\$ 1,247.75
36 months total cost		\$ 2,874.60	\$ 2,206.15	\$ 2,030.00	\$ 2,016.79	\$ 1,655.75
48 months total cost		\$ 3,832.80	\$ 2,788.39	\$ 2,534.00	\$ 2,535.19	\$ 2,063.75
60 months total cost		\$ 4,791.00	\$ 3,370.63	\$ 3,038.00	\$ 3,053.59	\$ 2,471.75

Furthermore, calculating the cost to the State in this manner only reflects the price to acquire and operate a device *for one vehicle in each category*. The solicitation included 12,740 vehicle identification numbers of state-owned vehicles. While the solicitation did not break down the number of vehicles by category, failure to consider each offeror’s pricing per category against even an estimate of the number of vehicles per category doubtless resulted in a flawed allocation of points for price, and created an open invitation to manipulate the per-line prices.<sup>1</sup> This would also indicate that the total potential value of the contract is orders of magnitude higher than the \$5,000,000 stated on the Intent to Award.

For the Information Technology Management Office




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Michael B. Spicer  
Chief Procurement Officer

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<sup>1</sup> It may also create an opportunity for unbalanced pricing. S.C. Code Ann. Reg. 19-445.2122C; *Appeal by Advanced Imaging Systems, Inc.*, Panel Case No. 2013-7, n. 14.

Attachment 1

Steve Strickland  
AT&T Corp.  
1010 N. St. Mary's St., Rm. 14V  
San Antonio, TX 78215  
SS0528@att.com

September 28, 2020

Protest-itmo@itmo.sc.gov  
Chief Procurement Officer  
Information Technology Management Office

**SUBJECT:** Formal Protest of Award to GPS Insight LLC; Solicitation No. 5400018151; Contract No. 4400024684

**BY EMAIL**

To the Chief Procurement Officer:

AT&T Corp. ("AT&T") respectfully submits this its formal bid protest to the State's Award to GPS Insight LLC ("GPS") of Contract No. 4400024684, arising from Solicitation No. 5400018151 for an Aftermarket Fleet Telematics System.

In the State's evaluation of bids, AT&T received the highest score in both the Technical and Qualification categories, but scored lower than GPS in the Price category, causing AT&T to place second among all bidders. In this protest AT&T will demonstrate why we believe there was a material error in the scoring in the Price category. AT&T will show that if the competing bids had been scored correctly, AT&T would have received the highest overall score and been awarded the contract. AT&T will also show that its pricing is in fact lower than GPS' pricing, so long as one assumes that Using Government Units (UGU's) will stay on contract for any significant period of time. Thus, awarding the contract to AT&T will save the State substantial costs. Accordingly, AT&T requests that the award to GPS be withdrawn and the State enter into discussions with AT&T with a view toward finalizing a contract with AT&T. Alternatively, AT&T requests that the RFP be re-bid, to allow for a more clear apples-to-apples comparison of bids.

**The RFP Instruction Regarding How to Represent Monthly and Non-Recurring Charges.**

The RFP provided clear instructions on how bidders were to populate the Price Proposal. Specifically, the RFP directed:

*Complete and submit Exhibit A in Excel format as the Price Proposal. Every price entered in Exhibit A must be a single dollar amount, as outlined below, that represents the final price, inclusive of all proposed features, functionalities, and applicable ancillary services.*

***Monthly Price per Asset must be the total price inclusive of all subscription fees, secure cloud storage fees, etc. for the proposed solution.***

***Monthly Price for OEM Redirect per Asset must be the total additional price for ongoing data transfer from OEM device into proposed solution's platform and secure cloud storage.***

***One-Time Price per Asset must be the price for the physical device including all necessary ancillary connectors for the proposed solution.*** [Emphasis added]

***One-Time Price per Asset - Installation\* must be the total price for delivery of the device to the UGU's site and installation on the applicable asset by Contractor, at UGU's election.*** [Emphasis Added]

***One-Time Price per Asset - Shipping\* must be the total price for delivery of the device to the UGU's site. This price cannot exceed shipping rates established by SC Contract for Small Package Delivery.***

RFP Amendment 3 at p. 51.

In short, the RFP required the total price for the hardware to be specified separately as a "One-Time Price per Asset. The RFP also required delivery and installation to be specified separately as "One-Time Price per Asset." The Monthly Price per Asset was to include subscription fees, secure cloud storage fees, etc., but was not to include installation or the cost of hardware. Specifying Installation as a separate non-recurring charge is significant it that it would give a UGU the opportunity to avoid incurring this cost by installing the device itself – it was a cost that was "at UGU's election". See also RFP at page 20 under UGU Responsibilities: "Administrator will be responsible, upon purchase, for notifying Contractor whether Contractor or UGU will perform installation on assets to be equipped."

**AT&T's Proposal Complied with the State's Instructions. GPS' Proposal did not.**

AT&T complied with the above instructions to represent hardware and installation costs as One-Time Prices. Doing so resulted in an AT&T total monthly price, including Parts A, B, and C, of \$48.52, a One-Time Price total of \$459.43. Using the formula contained in the State's Pricing Proposal Exhibit A, the AT&T Total Evaluated Price was \$160.08. See Attachment A, Exhibit A of AT&T Response, AT&T's Price Proposal.

GPS did not comply with the RFP instructions. Instead, GPS represented its entire solution solely as Monthly Charges. Indeed, GPS acknowledges that contrary to the RFP requirements its Monthly Price for both Powered Assets (Part A) and Limited-Purpose Assets (Part B) includes "hardware device, ... professional installation and shipping inside" a "bundled [monthly] price." See Attachment B, Exhibit A of GPS Insight Response, GPS' Price Proposal. Thus, under GPS' proposal there was no opportunity for a UGU to elect to save money through its own installations.

**The State's Scoring of GPS' Price Proposal.**

Because GPS failed to comply with the requirement that hardware and installation charges be listed as One-Time Prices Per Asset, the State was not able to make a true apples-to-apples comparison of the AT&T and GPS prices. GPS' "Total Evaluated Price", because of an error in the State's form, was initially set at \$1,577.03. After the State's form was corrected, GPS' "Total Evaluated Price" was \$55.90, which gave GPS an overwhelming price advantage over every other bidder. See Attachment C, Corrected GPS Insight. However, because GPS bundled hardware and installation charges into its monthly charge, the Total Evaluated price was skewed in GPS' favor.

## **Analysis.**

As a result of GPS' failure to comply with the RFP instructions, there is no simple apples-to-apples comparison between AT&T's price (with a lower monthly price but a one-time install) and GPS' price (with a higher monthly price, but no upfront cost). The State's formula for evaluating the two prices unfairly penalized vendors like AT&T who complied with the RFP instructions, allowing GPS to benefit from its decision to load hardware and installation costs into the monthly price. The State's price evaluation failed to take adequately into account the real benefit in terms of lower costs to the State resulting from AT&T's lower monthly charge. It also failed to take into account the cost savings available to UGUs which opt for self-installation of devices.

The longer a UGU continues to receive service on a particular device, the better AT&T's lower monthly pricing looks compared to GPS'. The proposed contract is for a five-year term. Some UGUs may not keep the service for the entire five years, but there is every reason to believe that the majority of UGUs would keep their service in place for something close to five years, and certainly more than a single year. But even if a UGU were to only keep its service in place for a single 12-month period, the Pricing disparity between AT&T and GPS becomes much closer.

This becomes clear if one were to spread AT&T's One-Time Costs over a 12-month term, bundling them into its Monthly Charges as GPS did. AT&T's Total Evaluated Price becomes more in line with that of GPS. See 12-month Amortization Spreadsheet prepared by AT&T for this protest, Attachment D. On the assumption that a UGU's service is kept in place only twelve months, the Total Evaluated Price for AT&T's service becomes \$60.76, instead of the \$160.08 indicated.

When this revision is applied to the State's *Proposal Tabulation*, AT&T becomes the clear winner – even if assuming that UGU's service will only be kept in place for 12 months. Based on the State's initial tabulation, AT&T received a total score of 412.92, whereas GPS had a score of 418 and thus won the RFP. Had the State evaluated AT&T's Total Evaluated Price at \$60.76, instead of \$160.08, AT&T's score increases to 470, which is 52 points higher than GPS' score of 418. See AT&T's Proposed Re-Calculated Worksheet, attached as Attachment E. Thus, AT&T would have been the clear winner.

The above calculation assumes a 12-month service retention period. If in fact UGUs were to keep their devices the entire 60 months, the total Contract term, so that AT&T's One-Time Charge is amortized over the entire 60 months, AT&T's Total Evaluated Price drops down to \$39.32, well below GPS' Total Evaluated Price of \$55.90. See AT&T's 60-Month Amortization Spreadsheet, Attachment F. Thus, the State has a significant opportunity to save money by selecting AT&T's solution over that of GPS.

## **Conclusion and Request for Relief.**

The State's evaluation of the various bidders' proposal showed that AT&T was the clear winner when it came to strength of Technical Proposal and vendor Qualification. AT&T's technical score was 257, compared to GPS' score of 215. AT&T's Qualification score was 121, compared to GPS' score of 103. The only reason GPS came in first place was because of its decision not to comply with the RFP requirement that it separate out as a one time charge the hardware and installation costs. Once the scoring is adjusted to allow for an apples-to-apples comparison, AT&T becomes the clear winner.

Accordingly, AT&T requests that the State vacate the award to GPS and begin discussions with AT&T toward finalizing a contract either

(1) on the ground that GPS' Pricing Proposal was non-compliant and failed to allow UGU's the opportunity to perform their own installation, leaving AT&T as the high scoring responsive bidder; or

(2) on the ground that, even if GPS's proposal is not deemed to be non-compliant, once an appropriate adjustment is made to allow for a true comparison of the prices, AT&T would receive the highest score.

Alternatively, if the State believes the RFP instructions on how to complete the Pricing Sheet were insufficiently clear (AT&T believes the instructions were perfectly clear), AT&T requests that the RFP be re-bid.

Awarding the contract to AT&T will save the State's UGU's significant costs over the long run, while at the same time providing the State with a technically superior product provided by the more qualified vendor.

Please let me know if you have any questions. We would be happy to discuss this further with your office.

Sincerely,

Steve Strickland

AT&T – AVP Senior Legal Counsel

cc: William Butler, wbutler@mmo.sc.gov

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2019)*

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

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

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

FILING FEE: Pursuant to Proviso 111.1 of the 2019 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

- 
1. What is your/your company's monthly income? \_\_\_\_\_
  2. What are your/your company's monthly expenses? \_\_\_\_\_
  3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

**NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.**