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Protest Decision

Matter of: SADA Systems Inc.

Case No.: 2021-211

Posting Date: June 17, 2021

Contracting Entity: South Carolina Department of Transportation

Solicitation No.: 5400018669

Description: Asset Management Software Solution

DIGEST

Protest of specifications and a special standard of responsibility determination is denied. The protest letter of SADA Systems Inc. (SADA) 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

CN Issued	05/01/2020
Amendment 1 Issued	05/18/2020
Amendment 2 Issued	05/28/2020
Amendment 3 Issued	06/05/2020
Amendment 4 Issued	06/15/2020
Proposals Received	07/01/2020
Intent to Award Posted	05/25/2021
Intent to Protest Received	06/02/2021
Protest Received	06/09/2021

The State Fiscal Accountability Authority published this Competitive Negotiation on behalf of the South Carolina Department of Transportation (DOT) on May 1, 2020, to acquire an asset management software solution. Amendment 1 was published on May 18, 2020. Amendment 2 was published on May 28, 2020. Amendment 3 was published on June 5, 2020. Amendment 4 was published on June 15, 2020. An Intent to Award was posted to Agileassets, Inc. on May 25, 2021. SADA filed an Intent to Protest on June 2, 2021 followed by a formal protest on June 9, 2021.

ANALYSIS

This solicitation included the following Special Standard of Responsibility:

L.3 Qualifications - Special Standards of Responsibility (MAR 2015):

This section establishes special standards of responsibility. UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER:

Offeror has implemented their asset management solution at one or more US state transportation agencies within the last 10 years with multiple program area modules and greater than 200 direct end users.

[Solicitation, Page 19]

The requirement for US state experience was reinforced in Amendment 3:

6. Will the State accept local agencies similar in size and scope to that of DOT as project reference(s)?
References as specified in section L.6.1.c. Vendor experience - can be for projects with other transportation agencies of similar size and scope within the last 10 years. However, the Qualifications - Special Standards of

Responsibility requirement in section L.3 specifically requires the offeror to have US state transportation agency experience.

[Amendment 3] (emphasis in original)

Regulation 19-445.2125(F) defines a special standard of Responsibility as:

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

(emphasis added)

On September 25, 2020, the State notified SADA that its proposal was not in the competitive range with the following explanation:

Section L.3 of the Solicitation, Qualifications – Special Standards of Responsibility, further states that to receive consideration for award an offeror must provide adequate information to establish that it has implemented its asset management solution at one or more US state transportation agencies within the last 10 years with multiple program area modules and greater than 200 direct end users. After considering your proposal and any additional information you may have provided, the State has determined you do not meet the special standard of responsibility established in Section L.3. SADA provided 3 US state transportation agencies as customers. Two of the agencies, Colorado and Nebraska, were not implementations of an asset management solution. The third agency, Utah, was a project which has not been implemented.

Based on the above and in accordance with the evaluation methodology, the State has determined that SADA Systems, Inc. is outside the competitive range.

SADA protests:

First, SCDOT's conclusion that Colorado and Nebraska were not asset management solution implementations is factually incorrect. In reality, SADA's Atom team deployed asset management solutions in both of those states.

SADA argues:

Second, SCDOT's real purpose in imposing this (oversimplified) requirement is to ensure that the offeror is adequately qualified and can demonstrate a track record of asset management solution deployment(s) of comparable size and complexity to those required by state transportation agencies; this is the spirit, if not the letter, of your requirement. SADA's Atom solution more than meets this

criteria. SADA's record of successful implementations include: Chicago Department of Transportation: \$7.5M+ over 10 years; Utah Department of Transportation: \$4M over 10 years; Hennepin County: \$1M over 7 years; Bridge Inspection Team - CDOT: \$1M over 3 years; City of Seattle: \$1.7M over 6 years; City of Detroit: \$2M over 5 years; City of San Francisco: \$1M over 5 years; City of San Diego: \$1M over 5 years and many more.

Third, SCDOT's attempt to exclude new entrants like Atom stifles innovation in the asset management solution industry, depriving state agencies of a wider pool of qualified offerors from which to choose. This ill-conceived and overbroad policy serves to entrench existing market players in exclusive positions, codifies cozy relationships between procurement teams and antiquated vendors, and deprives state agencies of an opportunity to fairly and transparently evaluate the benefits of newer, more advanced technologies, which are often available at lower costs to taxpayers. This places South Carolina at a decided disadvantage in comparison to the more open policies favored by Utah, where SADA's Atom solution decisively beat AgileAssets in a head-to-head competition.

In the Qualifications section of its proposal, SADA included descriptions of its work with the Colorado Department of Transportation and the Nebraska Department of Transportation as follows:

Colorado Department of Transportation:

Project Description: Project consisted of the development of a statewide asset management program and mobile application for all walls in the state. For the Colorado Department of Transportation (CDOT) walls are inclusive of retaining walls, sound/noise walls, and bridge walls. The software is used to collect, analyze, and distribute field data and compile condition reports for all of the structures. Work included the development of the web-based data management system, geospatial database, draft CDOT Recording and Coding Guide, and 80% draft risk-based Asset Management Plan and field inspections of all of the walls. All assets within the Colorado DOT deployment are linear assets with complex multiple geospatial representations in a single coordinate. The Colorado DOT leverages the system for contracted workers to perform work orders, work order management, and communication. The contracted workers are tasked with generating reporting metrics (Work Orders, Inspection, Results, QA, etc.) to CDOT.

[SADA Proposal, Page 15]

Nebraska Department of Transportation:

Project Description: Project consists of providing a cloud platform of the following: Budget Builder, Trade-off Analysis Support, Workforce Planning,

Open Data, Performance Measures, Reporting and Analysis, Story Builder, Transparency, and Open Town Hall.

[SADA Proposal, Page 17]

The State sought to clarify concerns about these two engagements on July 13, 2020:

Your offer references engagements with Colorado and Nebraska for implementation services. The number of modules that were implemented and the number of direct end users is unclear. It appears that other engagements with US state transportation areas were for plans/studies rather than asset management solution implementation.

Please provide a detailed, narrative statement with adequate information to establish that you meet all the requirements stated in the Special Standard of Responsibility. If you intend for us to consider the qualifications of your key personnel, predecessor business(es), or subcontractor(s), please provide this information and explain the relationship between you and such person or entity.

On July 15, 2020, SADA responded:

Colorado

Users: 300+

Use: Colorado Department of Transportation (CDOT) is leveraging products built by the Atom Team that help with asset management, mobile inspections, maintenance, and more. Within the Division of Aeronautics within CDOT, our partner, OpenGov, is fulfilling the department's needs for transparency and reporting against their financial information.

Nebraska

Users: 15+ superusers directly responsible for building reports and modeling analytical models and 1,000+ users with access

Use: Nebraska Department of Transportation is currently leveraging our partner, OpenGov, for support in budgeting, trade-off analysis, fleet management, performance management, and reporting and analysis.

The implementation of Atom for the **Utah Department of Transportation (UDOT)** has begun. The scope of work is centered around asset management, maintenance management, budgeting, mobile, and more for over 3,000 users and is set to replace the use of their current software vendor. We encourage you to reach out to UDOT about the implementation of Atom for this project. Additional project and contact information for UDOT will be provided upon request.

On July 22, 2020, the State sought additional clarification:

Your response provided more information on the Colorado DOT project reference. It is SCDOT's understanding that the CDOT implementation is an SAP

asset management implementation that went live sometime in 2018. Is CDOT currently using Atom or an SAP asset management solution? Please clarify this reference information. The Nebraska DOT reference appears to be a financial planning and analysis application that was accomplished by OpenGov. This does not appear to satisfy the requirement for qualifications in the implementation of an asset management solution with multiple program area modules. The Utah DOT reference is for a new implementation that has not been completed or accepted. Please provide additional clarification regarding these projects or another project that meets the above requirement.

SADA responded on July 22, 2020:

Colorado Department of Transportation (CDOT) is leveraging products built by the Atom Team that help with asset management, mobile inspections, maintenance, and more for several ancillary infrastructure assets. Workflows (modules) supported are asset management, maintenance management, and mobile data collection. Our product helps support CDOT's overall asset management processes but is not the overarching asset management system. Within the Division of Aeronautics within CDOT, our partner, OpenGov, is fulfilling the department's needs for transparency and reporting against their financial information.

Our Nebraska reference is specifically for OpenGov (our partner) and is to show trade-off analysis experience and deployment.

Our work with the Utah Department of Transportation (UDOT) is a new implementation for asset management, maintenance management, time management, equipment & material management, and mobile data collection. It is not being included as reference, but more as a description of a current client.

The State gave SADA two opportunities to clarify that the Colorado and Nebraska engagements involved SADA's implementation of an asset management solution which it did not do. For Colorado, SADA even admits that its "product helps support CDOT's overall asset management processes but is not the overarching asset management system." The State appropriately rejected SADA's proposal for failure to meet the Special Standard of Responsibility. This issue of protest is denied.¹

¹ SADA's protest letter also alleges that "SCDOT's attempted to exclude new entrants like Atom stifles innovation in the asset management solution industry, depriving the state agencies of a wider pool of qualified offerors from which to choose." To the extent this can be read as a protest to the special standards of responsibility, it should have been raised within 15 days of the issuance of the special standards of responsibility and is denied as untimely. *See* S.C. Code § 11-35-4210(1)(a).

SADA next protests the use of trademarked terms in the solicitation:

Use of Trademarked Terms in a Solicitation

Please see Part 1 / Section B3 (PDF Page 5 of 109 of original solicitation), “*Core System Software including GIS Interface, **LRS Gateway**, reporting, notification, user groups and end user authentication, admin access in SCDOT Test and Prod environment*”.

Please see Attachment C / Background Section / Item 7 (PDF Page 47 of 109 of original solicitation), “*Linear Referencing System (LRS) and in Geographic Information System (GIS) Gateway*”.

Please see Attachment C / Figure 1 (PDF Page 48 of 109 of original solicitation).

Please see Attachment C / Background Section / Item 9 (PDF Page 53 of 109 of original solicitation), “*GIS Interface and **LRS Gateway** – CDOT has been using Geomedia/Oracle Spatial but is beginning to work with esri ArcGIS and it is expected that EAMS will leverage web map services from the newly deployed ArcGIS platform. The GIS mapping data for the road network is currently within Geomedia Transportation Manager, but SCDOT is looking to possibly implement esri Roads & Highways at some point in the future. The LRS is currently maintained by SCDOT in both the RIMS application and within its Oracle Spatial database. Changes to the LRS are currently updated in both data sources independently. The RIMS application is supported by PMG Software Professionals and includes route modification workflows for adjusting LRS referenced features within RIMS. Those route modifications currently must also be performed within the GIS to keep the two sources of information synchronized*”.

This term is a trademarked term by the awarded vendor, AgileAssets. It is unconscionable for SCDOT to require the inclusion of terms trademarked by one competing vendor in any bid(s) submitted by others, thus placing vendors in direct peril of trademark infringement. For reference: <https://www.agileassets.com/products/lrs-solutions/>. The inclusion of this trademarked term strongly suggests that SCDOT’s selection of AgileAssets was a foregone conclusion from the start, and that the design and execution of the RFP and award process itself lacked fairness and transparency. The requirements could not be more partial to AgileAssets, if AgileAssets had simply written them themselves. Surely, SCDOT would not wish for vendors, South Carolina taxpayers or its auditors questioning the motives of those entrusted with this important selection.

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.

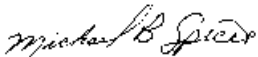
(emphasis added)

These terms are found in the original solicitation which was published on May 1, 2020. These issues could have been raised as a protest of the solicitation but cannot be now raised as a protest of the award. This issue of protest is denied.

DECISION

For the reasons stated above, the protest of SADA Systems, Inc. is denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



June 8, 2021

Subject: Protest Letter

State of South Carolina
SC Department of Transportation (alternatively, "SCDOT")
SFAA, Div. of Procurement Services, MMO
1201 Main Street, Suite 600
Columbia, SC 29201

**ATTN: Chief Procurement Officer for South Carolina Department of Transportation,
Information Technology Management Office**

Please see below for SADA Systems Inc.'s formal grounds for its protest regarding solicitation #5400018669.

Objection #1 - Project References

Section L.3 of the Solicitation, Qualifications – Special Standards of Responsibility, further states that to receive consideration for award, an offeror must provide adequate information to establish that it has implemented its asset management solution at one or more US state transportation agencies within the last 10 years with multiple program area modules and greater than 200 direct end users.

We did not meet the requirements to the following: *"Section L.3 of the Solicitation, Qualifications – Special Standards of Responsibility, further states that to receive consideration for award, an offeror must provide adequate information to establish that it has implemented its asset management solution at one or more US state transportation agencies within the last 10 years with multiple program area modules and greater than 200 direct end users."*

SADA provided 3 US state transportation agencies as customers. Two of the agencies, Colorado and Nebraska, were not implementations of an asset management solution."

First, SCDOT's conclusion that Colorado and Nebraska were not asset management solution implementations is factually incorrect. In reality, SADA's Atom team deployed asset management solutions in both of those states.

Second, SCDOT's real purpose in imposing this (oversimplified) requirement is to ensure that the offeror is adequately qualified and can demonstrate a track record of asset management solution deployment(s) of comparable size and complexity to those required by state transportation agencies; this is the spirit, if not the letter, of your requirement. SADA's Atom solution more than meets this criteria. SADA's record of successful implementations include: Chicago Department of Transportation: \$7.5M+ over 10 years; Utah Department of Transportation: \$4M over 10 years; Hennepin County: \$1M over 7 years; Bridge Inspection Team - CDOT: \$1M over 3 years; City of Seattle: \$1.7M over 6 years; City of Detroit: \$2M over 5 years; City of San Francisco: \$1M over 5 years; City of San Diego: \$1M over 5 years and many more.

Third, SCDOT's attempt to exclude new entrants like Atom stifles innovation in the asset management solution industry, depriving state agencies of a wider pool of qualified offerors from which to choose. This ill-conceived and overbroad policy serves to entrench existing market players in exclusive positions, codifies cozy relationships between procurement teams and antiquated vendors, and deprives state agencies of an opportunity to fairly and transparently evaluate the benefits of newer, more advanced technologies, which are often available at lower costs to taxpayers. This places South Carolina at a decided disadvantage in comparison to the more open policies favored by Utah, where SADA's Atom solution decisively beat AgileAssets in a head-to-head competition.

Atom is being deployed to over 1000+ users in the state of Utah, and can currently handle 100K+ users, 100M+ data points, throughout all deployed organizations. We believe that this requirement is not in the best interest of South Carolina as it does not allow new products in the market to be viewed against existing products.

We believe that references should be taken into account when identifying a vendor for an organization; however, this should not preclude that vendor from getting to a secondary stage to be compared to potentially older/legacy systems that Atom is currently replacing. Atom was selected to replace AgileAssets due to users' inability to use the system, performance issues and more.

Objection #2 - Use of Trademarked Terms in a Solicitation

Please see Part 1 / Section B3 (PDF Page 5 of 109 of original solicitation), *"Core System Software including GIS Interface, **LRS Gateway**, reporting, notification, user groups and end user authentication, admin access in SCDOT Test and Prod environment"*.

Please see Attachment C / Background Section / Item 7 (PDF Page 47 of 109 of original solicitation), *"Linear Referencing System (LRS) and in Geographic Information System (GIS) Gateway"*.

Please see Attachment C / Figure 1 (PDF Page 48 of 109 of original solicitation).

Please see Attachment C / Background Section / Item 9 (PDF Page 53 of 109 of original solicitation), *"GIS Interface and **LRS Gateway** – CDOT has been using Geomedia/Oracle Spatial but is beginning to work with esri ArcGIS and it is expected that EAMS will leverage web map services from the newly deployed ArcGIS platform. The GIS mapping data for the road network is currently within Geomedia Transportation Manager, but SCDOT is looking to possibly implement esri Roads & Highways at some point in the future. The LRS is currently maintained by SCDOT in both the RIMS application and within its Oracle Spatial database. Changes to the LRS are currently updated in both data sources independently. The RIMS application is supported by PMG Software Professionals and includes route modification workflows for adjusting LRS referenced features within RIMS. Those route modifications currently must also be performed within the GIS to keep the two sources of information synchronized"*.

This term is a trademarked term by the awarded vendor, AgileAssets. It is unconscionable for SCDOT to require the inclusion of terms trademarked by one competing vendor in any bid(s) submitted by others, thus placing vendors in direct peril of trademark infringement. For reference: <https://www.agileassets.com/products/lrs-solutions/>. The inclusion of this trademarked term strongly suggests that SCDOT's selection of AgileAssets was a foregone conclusion from the start, and that the design and execution of the RFP and award process itself lacked fairness and transparency. The requirements could not be more partial to AgileAssets, if AgileAssets had simply written them themselves. Surely, SCDOT would not wish for vendors, South Carolina taxpayers or its auditors questioning the motives of those entrusted with this important selection.

SADA respectfully requests that SCDOT re-open this competition at once. Such a decision would be in the best interests of South Carolina and the pursuit of transportation safety, product innovation and cost efficiency.

Thank you for your consideration. We look forward to your earliest reply.

Very truly yours,



Patrick Monaghan
SADA Systems, Inc.
Chief Legal Officer

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

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 2020 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.