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## Protest Decision

**Matter of:** OMNIQ Corp.

**Case No.:** 2021-212

**Posting Date:** June 17, 2021

**Contracting Entity:** Lander University

**Solicitation No.:** SP-458-02-23-2021

**Description:** Parking Enforcement Solution for the Lander University Police Department

### DIGEST

Protest that the evaluation was flawed is denied. The protest letter of OMNIQ Corp. (OQ) 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	02/05/2021
Amendment 1 Issued	02/17/2021
Amendment 2 Issued	02/17/2021
Amendment 3 Issued	02/19/2021
Amendment 4 Issued	02/22/2021
Statement of Award Posted	06/01/2021
Intent to Protest Received	06/01/2021
Protest Received	06/14/2021

Lander University published the Request for Proposals on February 5, 2021, for a parking management system which will include a user portal for payment of parking fees and fines, ticket management, and mobile equipment to streamline parking enforcement by officers.

Amendments 1 and 2 were published on February 17, 2021. Amendment 3 was published on February 19, 2021, and Amendment 4 was published on February 22, 2021. A Statement of Award was posted to Dri-Stick Decal, Inc. DBA Rydin on June 1, 2021. OQ filed an Intent to Protest on June 1, 2021 followed by its formal protest on June 14, 2021.

## ANALYSIS

OQ protests:

We are bringing this protest on the following grounds:

1. We met the qualification requested and required
2. Our pricing evaluated was better in year one (1)

We are availing ourselves of the intent to protest as stated in subsection (2) within fifteen (15) days of the date of award or notification of intent to award. This is our formal Protest Notification to Lander University's RFP #: SP-458-02-23-2021.

It is our understanding we have met and surpassed the qualifications requested and required. We also see that our pricing was better in year one (1) and would prove to bring better value and benefit to the Lander University campus.

Thank you for taking this protest in consideration,

The South Carolina Procurement Review Panel set the standard for review when challenging an RFP evaluation:

Under § 11-35-2410, a determination by the State as to which proposal is the most advantageous considering price and the other evaluation criteria is final and conclusive unless such determination is "clearly erroneous, arbitrary, capricious,

or contrary to law." 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.

In re: *Protest of Santee Wateree Regional Transportation Authority, Appeal by Santee Wateree Regional Transportation Authority*, Panel Case 2000-5

OQ has the burden of proof that the evaluation was arbitrary or capricious or violated the law in some way. OQ has failed to meet this burden. It has failed to allege that the evaluation was arbitrary, capricious, or in violation of law, much less provide any proof that the evaluation was flawed. In the absence of such proof, the CPO will not re-evaluate proposals and will not substitute its judgment for the judgment of the evaluators.

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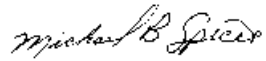
Case No. 2021-212

June 17, 2021

## **DECISION**

For the reasons stated above, the protest of OmniQ Corp is denied.

For the Information Technology Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1



June 14, 2021

TO: [protest-itmo@itmo.sc.gov](mailto:protest-itmo@itmo.sc.gov)

FR: omniQ VISION

RE: Protest of Lander University RFP #: SP-458-02-23-2021

To CPO -ITMO,

On June 1, 2021 our firm, omniQ VISION, filed an email submission of our Intent to Protest Lander University's award of RFP #: SP-458-02-23-2021. We are bringing this protest on the following grounds:

1. We met the qualification requested and required
2. Our pricing evaluated was better in year one (1)

We are availing ourselves of the intent to protest as stated in subsection (2) within fifteen (15) days of the date of award or notification of intent to award. This is our formal Protest Notification to Lander University's RFP #: SP-458-02-23-2021.

It is our understanding we have met and surpassed the qualifications requested and required. We also see that our pricing was better in year one (1) and would prove to bring better value and benefit to the Lander University campus.

Thank you for taking this protest in consideration,

omniQ VISION

## 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.

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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 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**

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

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

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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.**