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Protest Decision

Matter of: Pearson VUE, a business of NCS Pearson, Inc.

Case No.: 2022-136

Posting Date: June 30, 2022

Contracting Entity: Department of Insurance

Solicitation No.: 5400023523

Description: License Testing and Administrative Services

DIGEST

Protest alleging improper evaluation and award is granted. The protest letter of Pearson VUE, a business of NCS Pearson, Inc. (NCS) is included by reference. (Attachments 1)

AUTHORITY

The Chief Procurement Officer¹ (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.

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

Solicitation Issued:	03/04/2022
Amendment 1 Issued	04/08/2022
Bids Received	04/25/2022
Intent to Award Posted	06/03/2022
Intent to Protest Received	06/10/2022
Amended Protest Received	06/17/2022

The State Fiscal Accountability Authority issued this Request for Proposals on behalf of the Department of Insurance on March 4, 2022, for license testing and administrative services. Amendment 1 was issued on April 8, 2022. An Intent to Award to PSI Services, LLC (PSI) on June 3, 2022. NCS filed an intent to protest on June 10, 2022, followed by its formal protest on June 17, 2022.

ANALYSIS

Proposals were evaluated by five evaluators using the following criteria which were published in the solicitation in relative order of importance, with the first factor being the most important:

1. Technical Approach
2. Price
3. Experience and Qualifications

The five evaluators scored the first and third criteria. Before the points for price were applied, NCS was the highest ranked offeror by 41 points as follows:

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Total
PSI						
Qualifications	10	15	19	16	18	78
Technical Proposal	57	60	60	62	65	304
Total Points						382
Pearson Vue						
Qualifications	17	18	20	20	17	92
Technical Proposal	64	65	65	69	68	331
Total Points						423

The points for Price were allocated by the procurement officer using a formula that awarded points based on the ranking of the proposed prices rather than the traditional method of awarding

a portion of the available points based on relationship between the prices. PSI proposed a total price of \$2,082,500 and NCS proposed a total price of \$2,507,500. PSI was the low-priced offer and received the maximum 20 points available per evaluator for a total of 100 points. NCS' proposed a price that was only \$425,000 or 20 % more than PSI, but because the allocation of points was based on its second-place ranking, it only received 50% of the points available or 10 points per evaluator for a total of 50 points. After the application of points for price, PSI was the highest ranked offeror and identified as most advantageous to the State in the Intent to Award.

NCS protests:

In the Cost Evaluation, however, SFAA DPS did not follow its own instructions (and example) for calculating total points. While the lowest cost offeror was entitled to the full amount of Cost Evaluation points, Pearson VUE, if it did submit the second lost (sic) cost proposal, should have been awarded a proportion of total cost points equal to its relative price differential from PSI's lowest price. That is, Pearson VUE should have received a fraction of the total available points equal to the fraction represented by PSI's evaluated price divided by Pearson VUE's evaluated price.... Instead, SFAA DPS errantly awarded Pearson VUE only half of the available cost evaluation points (10 out of 20)

The spreadsheet used to allocate points for price included the following instructions:

$LP/HP=\%, 20 \times \%= \text{Total Points}$

Evaluation Methodology:

1. The value submitted by each vendor is entered as it appeared on their price proposal for the total project cost.
2. The values are then ranked against each other. Lowest value is ranked first, second lowest value is ranked second, etc. Tied values are ranked the same.
3. All values for each vendor are tabulated and points and the lowest point total is award (sic) the maximum of 20 points. All other points will be determined by the following formula.

Low Point divided by the Higher Point and the result is multiple by the total possible points.

For example, the Low Total Points is 75 submitted by Vendor A so Vendor A is awarded the maximum 20 points and 75 becomes our Low Number in the formula.

The next lowest Total Points was Vendor C with 83. 75 is divided by 83 which equals .9 (or 90%) of the Lowest Total Points. The number 20 is multiplied by .9 (or 90%) resulting in 18.

Vendor C is awarded 18 points.

All fractions are rounded up to the next highest whole number.

[Composite scoresheet]

Starting at number 3, these instructions are impossible to understand in the context of this procurement. Although the spreadsheet in the procurement officer's file contained an embedded formula that resulted in PSI receiving 20 points and NCS receiving 10 points, the actual stated formula in the "methodology" section is consistent with the State's standard point-allocation formula.²

If a formula based on price differential is applied, NCS receives 17 points per evaluator or 83.05 points instead of 50:

$$(2,082,500 / 2,507,500) \times 20 = 16.61 \times 5 = 83.05$$

When combined with the scores for the other evaluation criteria, NCS is the highest ranked offeror:

		PSI	Pearson Vue
	Panel Evaluation Points Awarded	382	423
	Cost Evaluation Points Awarded	100	85
	Total Points Awarded	423	506.05

² If the Procurement Officer's embedded formula was the formula meant to be used for allocating points, it is arbitrary, as the points awarded have no reasonable relation to the difference in the prices. Regardless of whether there was a one-dollar difference or a one-million-dollar difference, number 2 will receive one half of the available points.

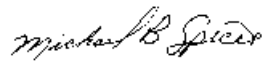
The Procurement Code is silent about how prices must be compared in an RFP. However, whatever process is selected, it must have a rational basis. In other words, the price evaluation may not be "arbitrary." S.C. Code §11-35-2410; see *In Re: Protest of Value Options*, Panel Case No. 2001-7 (equating "arbitrary and capricious" with "a lack of reasonable or rational basis").

In the RFP process, the allocation of points for price by formula, regardless of whether the calculation is based on ranking, price differential, or some other predetermined factor, barely qualifies as an evaluation. There is no consideration of the perceived value one proposal delivers over another. No consideration of the reasonableness of the price, the implied costs, any perceived benefits, or risks. When this minimally acceptable evaluation by calculation renders a result that has no relationship to the difference in price, the illusion of an evaluation vanishes, and the allocated points lack and reasonable or rational basis.

DECISION

For the reasons stated above, the award to PSI Services, LLC is cancelled. Award is made to the highest ranked offeror, Pearson VUE, a business of NCS Pearson, Inc.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

**STATE OF SOUTH CAROLINA
STATE FISCAL ACCOUNTABILITY AUTHORITY
DIVISION OF PROCUREMENT SERVICES, MMO**

In the Matter of:

PEARSON VUE,
Protestor.

SOUTH CAROLINA DEPARTMENT OF
INSURANCE,
Agency.

Solicitation No. 5400022523
Licensing and Testing Administrative
Services

VIA EMAIL & OVERNIGHT EXPRESS DELIVERY

Chief Procurement Officer
Materials Management Office
1201 Main Street
Suite 600
Columbia, SC 29201
Email: protest-mmo@mmo.sc.gov

Re: **Protest of Notice of Intent to Award Solicitation 5400022523 Licensing and Testing Administrative Services (the "Solicitation")**

Dear Chief Procurement Officer:

This firm represents Pearson VUE, a business of NCS Pearson ("Pearson VUE"), an offeror under the Solicitation. Pearson VUE respectfully submits this Protest to South Carolina's State Fiscal Accountability Authority Division of Procurement Services ("SFAA DPS") which issued the Solicitation on behalf of South Carolina Department of Insurance ("SCDOI"). Pearson VUE protests the Notice of Intent to Award (the "NOIA") the resulting Contract to PSI Services, LLC ("PSI") issued by SFAA DPS on June 3, 2022 (Attached hereto as "**Exhibit A**").

In compliance with S.C. Code Ann. § 11-35-4210(2), Pearson VUE submits this written Protest to the appropriate Chief Procurement Officer and sets forth the grounds of its Protest and the relief requested. Further, Pearson VUE notes that this Protest is compliant with S.C. Code Ann. § 11-35-4210(1)(b), as Pearson VUE was an actual offeror under the Solicitation.

For the reasons stated herein, SFAA DPS should rescind the NOIA, reevaluate the offerors' proposals, and issue a new NOIA in favor of Pearson VUE. Pearson VUE reserves the right to supplement or amend this Protest if additional, different, or more complete information becomes available.

PROTESTOR:

PEARSON VUE
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Bloomington, MN 55437

REPRESENTATIVE:

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SOLICITATION:

5400022523 Licensing and Testing Administrative Services

STANDING/ TIMELINESS:

According to the Solicitation (issued March 4, 2022) and the NOIA (posted June 3, 2022), "If you are aggrieved in connection with the award of the contract, you may be entitled to protest, but only as provided in Section 11-36-4210."

Pearson VUE has standing to file this Protest as it submitted a proposal to SFAA DPS. "[I]n order to protest an award or intended award, a party must bid on a contract and the State must announce its intent to award the contract to another bidder." In Re: Appeal of South Carolina Ass'n of the Deaf, South Carolina Procurement Review Panel, Case No. 2008-5 (Dec. 18, 2008).¹

¹ The South Carolina Procurement Review Panel Cases and CPO decisions can be found at: <https://procurement.sc.gov/legal/legal-panel-orders>

Pursuant to S.C. Code Ann. § 11-35-4210(1)(b), “[a]ny 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.” Pearson VUE’s Notice of Intent to Protest the Award was served upon the Chief Procurement Officer on June 10, 2022, within seven business days of the issuance of the NOIA. On June 13, 2022, Michael B. Spicer (Information Technology Management Officer of the Division of Procurement Services) confirmed receipt of Pearson VUE’s Notice of Intent to Protest the Award.

Further, under S.C. Code Ann. § 11-35-4210(1)(b), “[a]ny 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” Accordingly, Pearson VUE submits this Protest on June 17, 2022, within fifteen days of the NOIA issued on June 3, 2022. Therefore, the submission of Pearson VUE’s Protest is timely.² As provided by S.C. Code Ann. § 11-35-4210(8), Pearson VUE utilized the address of the Chief Procurement Officer that was provided within the NOIA and on Page 14 of the Solicitation.

- REQUESTED RELIEF:**
1. An immediate stay of the procurement, including of negotiating and/or executing a contract with the apparently successful bidder (S.C. Code Ann. § 11-35-4210(7));
 2. Rescission of the NOIA; ***and***

² The time for filing a protest is jurisdictional. *In Re: Protest of Oakland Janitorial Servs Inc.*, South Carolina Procurement Review Panel, Case No. 1988-13 (Nov. 17, 1988).

3. Re-evaluation of the proposals consistent with the Solicitation and South Carolina law and issuance of a NOIA to Pearson VUE.

I. BACKGROUND

On March 4, 2022, SFAA DPS issued the Solicitation on behalf of SCDOI. On April 8, 2022, SFAA DPS issued an Amendment to the Solicitation (“Amended Solicitation”).³ The Scope of the Solicitation, and the intended contract period, are as follows:

<p>I. SCOPE OF SOLICITATION</p> <p>ACQUIRE SERVICES (MODIFIED)</p> <p>The State Fiscal Accountability Authority, Office of State Procurement, on behalf of the SCDOI is seeking proposals from qualified offerors to establish a contract for License Testing and Administrative Services for the South Carolina Department of Insurance in accordance with the requirements stated herein.</p> <p>MAXIMUM CONTRACT PERIOD - ESTIMATED (JAN 2006)</p> <p>Start date: 07/01/2022 End date: 06/30/2027. Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled “Term of Contract - Effective Date/Initial Contract Period”. [01-1040-1]</p> <p>It is anticipated that the initial term of the contract will be one (1) year with four (4) one-year options to renew resulting in a maximum contract term of five (5) years.</p>
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See Amended Solicitation, p. 4.

In Section VI of the Solicitation, SFAA DPS states that the “Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State.” Importantly, SFAA DPS also lists the relative importance of the three Evaluation Factors:

³The Amended Solicitation extended the deadline to submit an offer until April 25, 2022. Further, the Amended Solicitation noted that the Award would be posted on May 20, 2022, and listed Ellicia Howard as the Procurement Officer.

EVALUATION FACTORS -- PROPOSALS (JAN 2006)

Offers will be evaluated using only the factors stated below. Evaluation factors are stated in the relative order of importance, with the first factor being the most important. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous.
(06-6065-1)

1. Technical Approach
2. Price
3. Experience and Qualifications

See Amended Solicitation, p. 26.

Pearson VUE timely submitted its Technical Proposal and Price Proposal on April 22, 2022 (relevant excerpts attached hereto as “**Exhibit B**”). The unit cost per examination presented by Pearson VUE covered all costs associated with test administration services as described in Pearson VUE’s proposal. Pearson VUE enumerated several of the drivers for their proposed price point: 1) free, first-time re-takes; 2) 100% of services performed in the United States; and 3) multi-modal delivery. Pearson VUE proposed the a unit price of \$59 per test, yielding a total contract price of \$2,507,500.00.

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price	Total Contract Price
0001	8,500	YEAR	\$59.00	\$501,500.00	\$2,507,500.00
Item Description: Individual Licensing and Testing					

See Exhibit B, Price Proposal, pp. 2 & 3 (“Based on your exam administration numbers and pass/fail rates, we estimate approximately 3,000 free re-takes will need to be honored for your program each year”).

PSI, the only other offeror under the Solicitation, submitted its Technical Proposal and Price Proposal (relevant excerpts attached hereto as “**Exhibit C**”). As seen below, the fixed price per examination listed was \$49.00.

Fixed Price Per Examination: \$49.00

The fixed price is per examination scheduled and is inclusive of all aspects of the scope of work addressed within the RFP.

See Exhibit C, Price Proposal, p. 2. Importantly, as discussed in Section II(D) below, PSI appears to have included, as an assumption, that it intends to charge for first-time re-take examinations, ignoring the Solicitation prohibition on such charges. See Exhibit C.

The NOIA was posted on June 3, 2022 and lists PSI as the intended award recipient. The NOIA further states that “Unless otherwise suspended or canceled, this document becomes the final statement of Award effective June 15, 2022. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.”

Contract Number: 4400029047			
Awarded To: PSI SERVICES LLC (7000064243) 611 N BRAND BLVD 10TH FLOOR GLENDALE CA 91203			
Total Potential Value:		\$ 2,082,500	
Initial Contract Period:		July 01, 2022 through June 30, 2023	
Maximum Contract Period:		July 01, 2022 through June 30, 2027	
Item	Description	Unit Price	Total
00001	Examination and Testing for SCDOI	\$ 49.00	\$ 416,500.00

See Exhibit A.

On June 3, 2022, Pearson VUE submitted a South Carolina Freedom of Information Act Request (“FOIA Request”) for a “copy of all proposals that were submitted in response to the RFP for License Testing and Administrative Service 400022523 along with any score sheets and evaluator notes or related materials.” In response, Pearson VUE received a copy of PSI’s Technical and Pricing Proposal (see Exhibit C) and the Evaluator’s Notes (attached hereto as “Exhibit D”). As seen in the Evaluator’s Notes, four of the five evaluators awarded Pearson VUE higher points in both the Technical Evaluation as well as in Experience/Qualifications/Capabilities:

Evaluator	Pearson VUE Technical Score	PSI Technical Score	Pearson VUE Experience, Qualifications & Capabilities Score	PSI Experience, Qualifications & Capabilities Score
William Weaver	68/70	65/70	17/20	18/20
Daniel Ashley	64/70	67/70	17/20	10/20
Rosa Rivers	65/70	60/70	18/20	15/20
Derrick Brown	65/70	60/70	20/20	19/20
Tom Watson	69/70	62/70	20/20	16/20

In response to the FOIA Request, Pearson VUE also received the “License Testing Composite Scoresheet.” This scoresheet contained three distinct tabs as seen below: Panel Evaluation Points (which is improperly labeled as Composite Scoresheet), Cost Evaluation and the Composite Scoresheet (collectively attached hereto as “**Exhibit E**”).

The Panel Evaluation tab of the scoresheet demonstrates that Pearson VUE significantly outscored PSI (by 27 total points) on the Technical section, which is the most important factor under the Solicitation. Notably, Pearson VUE also outscored the *incumbent* PSI on the Experience section, by 14 points.

	Evaluator 1	Evaluator 2	Evaluator 3	Evaluator 4	Evaluator 5	Total
PSI						
Qualifications	10	15	19	16	18	78
Technical Proposal	57	60	60	62	65	304
Total Points						382
Pearson Vue						
Qualifications	17	18	20	20	17	92
Technical Proposal	64	65	65	69	68	331
Total Points						423

See Exhibit E, p. 1.

PSI only scored higher than Pearson VUE in the Cost Evaluation, which was determined by the amount of revenue expected to be received by each offeror. The formula was based upon 8,500 paid examinations per year, for the five contract years, at a single, fixed “per test” rate. PSI’s evaluated price of \$2,082,500 was lower than Pearson VUE’s evaluated price of \$2,507,500.

In the Cost Evaluation, however, SFAA DPS did not follow its own instructions (and example) for calculating total points. While the lowest cost offeror was entitled to the full amount of Cost Evaluation points, Pearson VUE, if it did submit the second lost cost proposal,⁴ should have been awarded a proportion of total cost points equal to its relative price differential from PSI’s lowest price. That is, Pearson VUE should have received a fraction of the total available

⁴ As demonstrated in Section II(D) below, PSI’s apparent failure to agree to the Solicitation’s prohibition of charges for first time re-take examinations calls into question whether PSI’s proposal should have been rejected as non-responsive. Alternatively, if not rejected, SFAA DPS should have ensured an apples-to-apples comparison of pricing proposals, including adding to PSI’s evaluated cost the actual cost of the proposed first-time re-take examinations PSI should have agreed not to charge. Based upon Pearson VUE’s analysis, which was embedded in its own proposal, that would add 15,000 test charges to PSI’s evaluated price over the course of 5 years, resulting in an evaluated cost that would have been *higher* than Pearson VUE’s. For purposes of this Section, however, Pearson VUE assumes that PSI’s evaluated cost is accurate. In either case, Pearson VUE should have been awarded the contract.

points equal to the fraction represented by PSI's evaluated price divided by Pearson VUE's evaluated price. See Exhibit E, p. 2, "Evaluation Methodology." Instead, SFAA DPS errantly awarded Pearson VUE only half of the available cost evaluation points (10 out of 20):

	Pearson Vue	Rank	PSI	Rank	Rank	Rank	Rank
Account Management	\$2,507,500.00	2	\$2,082,500.00	1			
Total Points		2		1	0	0	0

Evaluation Points Awarded 10 20 #DIV/0! #DIV/0! #DIV/0!

LP/HP=%, 20 X %= Total Points

Evaluation Methodology:

1. The value submitted by each vendor is entered as it appeared on their price proposal for the total project cost.
2. The values are then ranked against each other. Lowest value is ranked first, second lowest value is ranked second, etc. Tied values are ranked the same.
3. All values for each vendor are tabulated and points and the lowest point total is awarded the maximum of 20 points. All other points will be determined by the following formula.
Low Point divided by the Higher Point and the result is multiple by the total possible points.

For example, the Low Total Points is 75 submitted by Vendor A so Vendor A is awarded the maximum 20 points and 75 becomes our Low Number in the formula.
The next lowest Total Points was Vendor C with 83. 75 is divided by 83 which equals .9 (or 90%) of the Lowest Total Points. The number 20 is multiplied by .9 (or 90%) resulting in 18.
Vendor C is awarded 18 points.
All fractions are rounded up to the next highest whole number.

See Exhibit E, p. 2.

SFAA DPS errantly awarded Pearson VUE one-half of the available points, because Pearson VUE ranked second-lowest in evaluated cost. The net effect of the errant calculation was that Pearson VUE was guaranteed to earn only 50 cost evaluation points, regardless of how its price compared to PSI's price:

	PSI	Pearson Vue			
Panel Evaluation Points Awarded	382	423			
Cost Evaluation Points Awarded	100	50			
Total Points Awarded	482	473			

Scoring Methodology:
The Panel Evaluation Points Awarded will be added to the points awarded for the cost evaluation to determine the proposal's total score.
This comprises the final score for each proposal.

See Exhibit E, p. 3 (reflecting the multiplication of the cost points earned in the Cost Evaluation by each offeror by 5, to yield the total maximum Cost Evaluation points of 100).

On June 8, 2022, Pearson VUE submitted a subsequent FOIA request and addressed its concerns with the pricing methodology, seeking "(1) any and all documents referring to or reflecting the scoring methodology planned to be used, dated from the initial drafting of the solicitation through the date of the issuance of the notice of intent to award; (2) and any additional documentation that outlines, describes, or reflects the application of the identified scoring methodology to the evaluated prices of the two offerors; and (3) any and all narrative

source selection memoranda, justification documents, or other written explanation of the proposed award to PSI.” (Attached hereto as “**Exhibit F**”).

On June 10, 2022, Ms. Ellicia Howard responded to Pearson VUE’s FOIA request and provided the: 1) “Evaluation Percentages” word document; 2) “License Testing and Administrative Services for SCDOI” word document; 3) “Justification for RFP” PDF; and 4) an email responding to Pearson VUE’s inquiry regarding cost scoring methodology, as follows:

Hello,

Below are the responses to your FOIA request along with attached documents:

#1 we don’t have anything for that. We received the solicitation already in progress and none of the documents we have reference any conversations related to how they determined scoring.

#2 everything we have related to this is in the spreadsheet. The ‘example’ in the spreadsheet is just that to demonstrate the methodology. It cannot be applied to specific numbers or prices in the evaluation.

(Attached hereto as “**Exhibit G**”). The “License Testing and Administrative Services for SCDOI” document containing the agency’s “Determination and Findings” provides no explanation as to the scoring methodology. (Attached hereto as “**Exhibit H**”). In fact, other than the instructions on the “Cost Evaluation” tab (Exhibit E), no other document provided in response to the FOIA Requests articulates the intended scoring methodology, including the initial “Justification for RFP” document which details SFAA DPS’ logic behind the use of competitive sealed proposals. (Attached hereto as “**Exhibit I**”).

II. GROUNDS OF PROTEST

A. Standard of Review.

The purpose and policies behind South Carolina's procurement law is to secure procurements that are most advantageous to the State, foster effective broad-based competition for public procurement within the free enterprise system, and to ensure the *fair and equitable treatment of all persons who deal with the procurement system* which will promote increased public confidence in the procedures in public procurement, among other goals. S.C. Code Ann. § 11-35-20(2) (emphasis added).

South Carolina law, at Section 11-35-2410, makes clear that the determinations required by the following sections and related regulations are “final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law.” The South Carolina Procurement Review Panel (the “Panel”) is “charged with conducting an administrative review of formal protests of decisions arising from the solicitation and award of contracts pursuant to the Procurement Code.” *Tall Tower, Inc. v. South Carolina Procurement Rev Panel*, 294 S.C. 225, 22-97, 363 S.E. 2d 683, 685 (1987). Consistent with hornbook law on reviewing agency procurement decisions, the Panel can and will regularly overturn procurement actions that violate the express terms of the Solicitation or South Carolina law, or otherwise are arbitrary or

capricious. See Blue Origin Fed'n, LLC v. United States, 157 Fed. Cl. 74, 104 (2021) (“[A]n agency’s procurement action may only be set aside if it is ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.’”).

As explained further below, the NOIA must be rescinded, and an award made to Pearson VUE for each of the following reasons. First, SFAA DPS miscalculated Pearson VUE’s points under the Standard Methodology (Exhibit E) which is regularly utilized in South Carolina procurements (as well as nationally). Second, if intentionally utilized, the applied Ranking Methodology – where the second lowest evaluated price always receives one-half of the available cost points regardless of the relative price differential between the first and second lowest offers – is inconsistent with the evaluation factor ranking in the Solicitation and is arbitrary. Third, because PSI violated the terms of the Solicitation and expressly assumed it could charge for first re-take examinations, either PSI’s proposal must be deemed nonresponsive and rejected; or, SFAA DPS must perform a re-evaluation of the cost proposals based upon an apples-to-apples comparison of revenue under the competing proposals. Such a comparison would increase PSI’s evaluated cost by approximately \$735,000 to an amount higher than Pearson VUE, resulting in a higher score for Pearson VUE on the Cost Evaluation factor as well. Lastly, PSI maintained an unfair advantage in the procurement process if SFAA DPS allowed PSI to propose that it will charge for first re-take examinations, contrary to the Solicitation and resulting Contract. For all these reasons, and as explained more fully below, Pearson VUE requests that SFAA DPS rescind its NOIA and re-evaluate the proposals.

B. SFAA DPS Miscalculated Pearson VUE’s Points Under the Cost Evaluation.

SFAA DPS miscalculated Pearson VUE’s total points. As seen on the Cost Evaluation sheet (Exhibit E), PSI was initially awarded 20 points and Pearson VUE was awarded 10 points.⁵ Based upon PSI’s \$49 unit price (as compared to Pearson VUE’s \$59 unit price), PSI automatically received the maximum of 20 points.

	Pearson VUE	Rank	PSI	Rank	Rank	Rank	Rank	Rank	Rank	Rank
Account Management	\$2,507,500.00	2	\$2,082,500.00	1						
Total Points		7		1	0	0	0	0	0	0
Evaluation Points Awarded	10		20		80%/91	80%/91	80%/91	80%/91	80%/91	80%/91
LP/HP-%, 20 X % = Total Points										
Lowest Total Points									1	

Evaluation Methodology:

- The value submitted by each vendor is entered as it appeared on their price proposal for the total project cost.
- The values are then ranked against each other. Lowest value is ranked first, second lowest value is ranked second, etc. Tied values are ranked the same.
- All values for each vendor are tabulated and points and the lowest point total is awarded the maximum of 20 points. All other points will be determined by the following formula:

$$\text{Low Point} \div \text{Higher Point} \text{ and the result is multiplied by the total possible points.}$$
For example, the Low Total Points is 75 submitted by Vendor A so Vendor B is awarded the maximum 20 points and 75 becomes our Low Number in the formula.
The next lowest Total Points was Vendor C with 83. 75 is divided by 83 which equals .9 (or 90%) of the Lowest Total Points. The number 20 is multiplied by .9 (or 90%) resulting in 18. Vendor C is awarded 18 points.
All fractions are rounded up to the next highest whole number.

⁵ These points were converted on the Composite Scoresheet so that the total amount of points for the Cost Evaluation was out of 100 points, accomplished by multiplying the Cost Evaluation Points by 5.

See Exhibit E, p. 2.

In accordance with SFAA DPS' evaluation methodology in subpart 3 above, "[a]ll other points will be determined by the following formula. Low point divided by the Higher point and the result is multiple [sic] by the total possible points." This is also reflected by the formula provided in the table, "LP/HP=%, 20 X %= Total Points." Therefore, Pearson VUE's calculation should have been performed as follows (the "Standard Methodology"):

Low Point	High Point	Percentage
\$2,082,500	\$2,507,500	83.05%
Total Possible Points	Percentage	Total Points
20	83.05%	16.61

As demonstrated by In Re: Protest of Polaroid Corporation, South Carolina Procurement Review Panel, Case No. 1988-12 (Nov. 7, 1988), the use of a standard mathematical formula in evaluating the cost section of the Solicitation responses is allowable: "Cost in this case was evaluated using a standard mathematical formula. The Panel can find nothing unfair or unreasonable in crediting each proposal for its price in this objective way." Id. In fact, the Standard Methodology has been regularly used and blessed in South Carolina procurements. See, e.g., Protest of AT&T Corp., CPO Decision, Case No. 2021-203 (Feb. 12, 2021). In that decision, the CPO noted that "[t]he 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." Id.

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:
(Lowest Price ÷ Price Being Evaluated) x Maximum Price Points Available = Awarded Price Points

Id.

Rather than applying the Standard Methodology, however, SFAA DPS used the below formula, which awarded cost evaluation points based exclusively on the ordinal ranking of evaluated costs (the “Ranking Methodology”):

Rank 1	Rank 2	Percentage
1	2	50.00%
Total Possible Points		
20	50.00%	10.00

Consequently, the Composite Scoresheet is incorrect, as Pearson VUE was guaranteed by the applied methodology to earn only half the available cost points, regardless of how its evaluated price compared to PSI evaluated price. This error violated the Standard Methodology. It was also material to the outcome as a properly calculated cost score for Pearson VUE would have resulted in it earning far more cost points, given the relative closeness in evaluated price.

Had SFAA DPS applied the Standard Methodology, Pearson VUE should have received 84 cost points, rather than 50, as the fraction of PSI’s evaluated cost over Pearson VUE’s cost was 83.05 percent (which is rounded up to the next highest whole number per the instructions). These additional 34 points⁶ for Cost Evaluation would give Pearson VUE a total of 507 points. Ultimately, if the Standard Methodology was utilized, Pearson VUE would have the greater number of total points and would be the award recipient. Consequently, the NOIA must be rescinded. Further, SFAA DPS must reevaluate the offerors’ proposals utilizing the Standard Methodology as prescribed in its own documentation and consistent with prior South Carolina solicitations, and issue a NOIA to Pearson VUE.

C. The Ranking Methodology Conflicts with the Evaluation Factors in the Solicitation and is Arbitrary.

Given that SFAA DPS’ own scoresheet template called for the utilization of the Standard Methodology, Pearson VUE believes that SFAA DPS merely miscalculated Pearson VUE’s points. However, if the applied Ranking Methodology was intentionally employed by SFAA DPS, then it is in direct conflict with the evaluation factors contained within the Solicitation and is arbitrary and capricious.

⁶ It is somewhat vague at what point in the methodology the “rounding up” should occur. Out of 20 points on the Cost Evaluation tab, Pearson VUE should have been awarded 16.61 points. Rounded up to 17 and then multiplied by 5, Pearson VUE would have earned 85 total cost points. For purposes of this Protest, Pearson VUE assumes that the “rounding up” should apply after the percentage is applied to the total available cost points of 100. Rounding up at that stage earns Pearson VUE 84 cost points. The difference of 1 cost point is not material to the outcome of this Protest.

a. *The Ranking Methodology Conflicts with the Evaluation Factors of the Solicitation and Consequently Violates South Carolina Law.*

If intentionally used, the Ranking Methodology conflicts with the evaluation factor ranking presented by SFAA DPS within the Solicitation. Ultimately, this violates South Carolina law and mandates reversal. S.C. Code Ann. § 11-35-1530(7).

The Procurement Review Panel has long held, and the Code is clear, that the scoring and subsequent award must be based on the evaluation factors specified in the solicitation. S.C. Code Ann. § 11-35-1530(9). See In Re: Protest of Polaroid Corp., South Carolina Procurement Review Panel, Case No. 1988-12 (Nov. 7, 1988).

Although a solicitation requires some subjective evaluation, the Procurement Code sets some boundaries on the evaluator's exercise of judgment. "The request for proposals must state the relative importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor." S.C. Code Ann. § 11-35-1530(5) ("Evaluation Factors"). "Proposals must be evaluated using only the criteria stated in the request for proposals and **there must be adherence to weightings that have been assigned previously**. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, **considering only the evaluation factors stated in the request for proposals**." S.C. Code Ann. § 11-35-1530(7) ("Selection and Ranking") (emphasis added). "Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, **taking into consideration the evaluation factors set forth in the request for proposals**, unless the procurement officer determines to utilize one of the options provided in Section 11-35-1530(8). The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP." S.C. Code Ann. §11-35-1530(9) ("Award")(emphasis added).

Within the Solicitation, the offerors were presented with the following evaluation factors in relative order of importance: Technical Approach, then Price, then Experience and Qualifications. See Amended Solicitation, p. 26. Further, SFAA DPS decided that the Technical Evaluation would be **3.5 times** more important than price, since the Technical Evaluation allowed for up to 350 points, while the Cost Evaluation would only be worth up to 100 points. Combined with Experience and Qualifications (worth 100 points), the two non-price factors combined were deemed to be **4.5 times** more important than price. See Exhibit E, pp. 1, 3.

SFAA DPS' Ranking Methodology improperly alters the relative order of importance of the evaluation factors. Under the Ranking Methodology, the lowest priced offeror would automatically receive 100 points and the second lowest would automatically receive 50 points, irrespective of the overall price differential between offerors. Ostensibly, a situation could arise where an offeror who was priced one cent higher than the other offeror would still only receive half the number of points. This simply cannot have been the intended methodology.

The Ranking Methodology would have the effect of weighing price *more* than the other two categories combined, since the second lowest price would be certain to lose by 50 points. Rather than weighing the non-price factors 4.5 times more significant than price, here Pearson VUE would have had to outscore PSI in the non-price factors, simply on raw score alone, by 50 points. This is in direct contradiction to the ranking of evaluation factors within the Solicitation and is consequently in violation of S.C. Code Ann. §11-35-1530(7). Id. (“Proposals must be evaluated using only the criteria stated in the request for proposals and *there must be adherence to weightings that have been assigned previously.*” (emphasis added)). Given the non-price evaluation methodology, it would have been virtually impossible for one offeror to beat another by that many non-price points. The Ranking Methodology therefore improperly elevates price in importance, contrary to the terms of the Solicitation.

As seen in Protest of Southeastern Educational Systems, Inc., CPO Decision, Case No. 2019-147 (July 12, 2019), the Protestant alleged that there were errors in the evaluation calculations. Within the solicitation, four evaluation criteria were listed in the relative order of importance: 1) Technical Requirements; 2) Price Proposal; 3) Vendor Competence; and 4) Delivery, Training & Installation. Each criterion was assigned a weight:

The weightings assign to the evaluation criteria were:	
Criteria	Assigned Weight
Technical Requirements	60
Price Proposal	20
Vendor Competence	12
Delivery, Training, & Installation	8

Id.

Like this Protest, the price proposals were evaluated and scored by the procurement manager using a mathematical formula. An offeror’s score for price was added to the scores for the other three criteria to make up the offeror’s overall score. The Protestant correctly protested that “using the total scores from the evaluators violated the requirement that there must be adherence to weightings that have been assigned previously.” Id. Notably, when the evaluators’ raw scores were averaged to bring the weighting in line with the requirements, it altered the ranking of highest offeror. Consequently, the Protest was granted and the NOIA was cancelled.

As in Protest of Southeastern Educational Systems, Inc., if the weighting is brought into compliance with the Solicitation (and South Carolina law), the highest ranked offeror would be Pearson VUE. As such, the NOIA must be cancelled, and the proposals must be re-evaluated giving the appropriate weight to the evaluation criteria as set forth in the Solicitation and in accordance with South Carolina law.

b. The Ranking Methodology is Arbitrary.

If intentionally used, the Ranking Methodology that SFAA DPS employed for its cost evaluations under the Solicitation is arbitrary. Again, S.C. Code Ann. § 11-35-2410 provides for the finality of determinations under the RFP process *unless* clearly erroneous, arbitrary, capricious, or contrary to law. (emphasis added).

Here, Pearson VUE can clearly show that SFAA DPS' utilization of the Ranking Methodology was arbitrary. SFAA DPS used a methodology that was in direct contravention to its own prescribed Standard Methodology. Indeed, if the state had received 10 offers, all within a few thousand evaluated dollars of each other, the 10th place price would get only 1/10th the cost points (10 out of 100 here) – again, even if only a few thousand dollars more expensive than the lowest priced offer. If the Ranking Methodology was the intended means to award cost points (despite the Standard Methodology in the cost evaluation tab) this would exemplify arbitrary scoring. As such, there is no reasonable or rational basis behind SFAA DPS' decision to abandon its Standard Methodology for the Ranking Methodology. The Standard Methodology is included within SFAA DPS' own documentation and has been previously used in other South Carolina solicitations. Awarding half of the available cost points to the second lowest offeror, one-third points to the third lowest offeror, one-quarter cost points to the fourth lowest offeror, and so on, is the essence of arbitrary. Unsurprisingly, the undersigned cannot find a single South Carolina procurement – or for that matter, any published decision in any jurisdiction – in which cost scoring was accomplished by the award of points using anything remotely like the Ranking Methodology.

Consequently, through SFAA DPS' use of the Ranking Methodology, the Composite Scoresheet is incorrect and the NOIA is flawed. As such, the NOIA must be rescinded, the cost proposals must be reevaluated, and award made to Pearson VUE.

D. PSI's Proposal was Non-Responsive, or at the Very Least, a Properly-Evaluated PSI Cost Score Would Have Led to Pearson VUE Winning the Cost Factor.

In addition to the clearly erroneous calculation error mandating reversal, Pearson VUE has also discovered that PSI's proposal violated the terms of the Solicitation, PSI's proposal should be rejected for the following reasons.

Pearson VUE's cost proposal explicitly accounts for the free re-take that South Carolina Insurance examinees are entitled to on their second exam attempt. This requirement is clearly outlined in the Cost Proposal section of the Solicitation: "*A producer, who fails an exam on their first attempt, will be given a second attempt free of charge. All subsequent exam re-takes will be charged.*" (emphasis added).

PRICE PROPOSAL:

PRICE: Offeror must submit a statement, in the manner described below under "1 and 2," reflecting the **FIXED PRICE PER PRODUCER ANNUALLY** for the Administration of the Individual Licensing Examination Program. This fixed Price per producer per year will not increase during the initial contract period; nor will any "add-ons, surcharges, additional charges or miscellaneous administrative fees" be permitted.

1. Offerors must submit a total Fixed Price Per Examinations, which includes all aspects of the work to be performed associated with this RFP. Any Offeror who submits an estimated Price or a "qualified" Price, or fails to include all aspects of the project in its Price will be deemed non-responsive and its proposal will be rejected. A producer, who fails an exam on their first attempt, will be given a second attempt free of charge. All subsequent exam re-takes will be charged.

See Amended Solicitation, p. 23.

Also, evaluator Mr. Daniel Ashley commented that Pearson VUE accurately applied this contractual obligation, resulting in an estimated 3,000 annual free re-take examinations being embedded in Pearson's proposal:

...this would be a possible benefit. Also, taking in consideration that 3,000 free retakes can be honored.

See Exhibit D.

Notably, this was also a requirement in South Carolina's 2017 Solicitation:

ALL PRICE MUST BE SUBMITTED IN A SEPARATE SEALED ENVELOPE.

1. Offerors must submit a total Fixed Price Per Examinations, which includes all aspects of the work to be performed associated with this RFP. Any Offeror who submits an estimated Price or a "qualified" Price, or fails to include all aspects of the project in its Price will be deemed non-responsive and its proposal will be rejected. A producer, who fails an exam on their first attempt, will be given a second attempt free of charge. All subsequent exam re-takes will be charged.

See Amendment 2 South Carolina Solicitation 5400012783 (dated April 25, 2017), p. 23 (relevant excerpt attached hereto as "Exhibit J").

a. *PSI's Proposal is Non-Responsive.*

PSI appears to have violated the free-first-re-take requirement mandate in the Solicitation. As such its proposal should be deemed non-responsive per the terms of the Solicitation: "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.” See Amended Solicitation at 11.

Notably, embedded in PSI’s proposal is a statement that it intends to charge for first re-take examinations:

The South Carolina Department of Insurance has contracted with PSI Services LLC (PSI) to conduct the examination program. PSI works closely with the Department to make certain that these examinations meet the State's as well as nationally established technical and professional standards for examination development and administration. PSI provides these examinations through a network of computer examination centers in South Carolina.

ON-LINE SCHEDULING

- Passing examination results are valid for one year.

Examination Fee	\$45
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NOTE: EXAMINATION FEES ARE NOT REFUNDABLE OR TRANSFERABLE. THE EXAMINATION FEE IS VALID FOR ONE YEAR FROM THE DATE OF PAYMENT.

THE EXAMINATION FEE IS FOR FIRST TIME AND RETAKE EXAMINATIONS.

See Exhibit C, p. 164 (including PSI’s “Examinee Handbook”).

Likewise, PSI’s “Failure Score Report” in its Technical Proposal reaffirms PSI’s expectation of payment for first re-take examinations:

Re-examination instructions: You may take the exam again after rescheduling and paying another full examination fee. Exam registration/schedule information may be found in the Licensing Information Bulletin, found at www.psiexams.com.

See Exhibit C, p. 141.

One of the evaluators, Mr. Watson, in fact pointed out this material deviation in PSI’s proposal in his evaluation comments:

- I am concerned that producers may be being charged for the repeat test based on their proposal screenshot: “Re-examination instructions: You may take the exam again after rescheduling and paying another full examination fee.”

See Exhibit D.

SFAA DPS was therefore on notice of this material nonconformance in PSI’s proposal, and was under a duty, if not to reject PSI’s proposal outright, then to seek a clarification that would have led to PSI increasing its price to cover those first-re-take examinations that it had budgeted and planned to charge.

Ultimately, PSI’s proposal was not evaluated correctly, which led to a proposed award that provides less value for the citizens of South Carolina.

First, PSI's proposal is non-responsive. Taking exception to a material contract requirement requires rejection. If PSI was non-compliant in this respect, then their proposal should be deemed non-responsive. See Amended Solicitation at p. 11 ("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.").

Second, even if rejection of PSI's proposal was not mandated, PSI's stated assumption would have had a material impact on its cost proposal. It is axiomatic that a proportional allocation of points based on a mathematical formula is only rational if the price entered into that formula provides for *common basis for the price comparison*. Protest of AT&T Corp., CPO Decision, Case No. 2021-203 (Feb. 12, 2021) (Emphasis added). "Stated simply, the prices compared must be apples-to-apples prices." Id.

To properly perform an apples-to-apples comparison, SFAA would have been required to add the 3,000 annual tests⁷ that PSI intended to (improperly) charge for to the 8,500 tests that were estimated annually for both offerors, as PSI's revenue under its proposal would have included the improper test charges, while Pearson VUE's clearly did not. Thus, not only was PSI non-responsive, but its improper effort to charge examinees should have added \$735,000 of cost to the State's evaluation of PSI. Adding that \$735,000 in revenue to PSI's \$2,082,500 in evaluated cost, yielding an apples-to-apples total cost of \$2,817,500, would accurately reflect PSI's anticipated revenue; *i.e.*, the cost to the State and its examinees. Since that number is higher than Pearson VUE's evaluated cost of \$2,507,500, Pearson VUE should have also earned the most points in the Cost Evaluation. Thus, award of the contract to Pearson VUE is further justified by a proper cost evaluation given PSI's stated rejection of the RFP requirement of free first-retake examinations.

b. PSI Maintained an Unfair Advantage If the State Waived the Free Re-take Requirement.

Alternatively, if South Carolina waived the requirement of free re-takes in PSI's current contract and intended to do so again for this Contract without Pearson VUE's knowledge, then Pearson VUE has been improperly disadvantaged by that unequal access to information that unfairly benefits PSI. The Procurement Review Panel has held that the evaluation process does not need to be perfect so long as it is fair. See In Re: Protest of NBS Imaging Sys., Inc., Appeal by NBS Imaging Sys., Inc., South Carolina Procurement Review Panel, Case No. 1993-16 (Sept. 1, 1993); In Re: Protest of Transp. Mgmt. Servs., Inc., Appeal by Transp. Mgmt. Servs., Inc., South Carolina Procurement Review Panel, Case No. 2000-3 (May 16, 2000). However, to the extent that PSI has been given an advantage by some unknown-to-Pearson VUE waiver of the

⁷ As explained in greater detail below, Pearson VUE's estimate is that up to 3,000 free re-takes would need to be honored annually, based on the pass rates for the State's exams. Pearson VUE included that assumption in its proposal, which was explicitly referenced by an evaluator. Exhibit B, Price Proposal, p. 2. If that number is substantially higher – information only known to the incumbent PSI and SFAA DPS and never provided to Pearson VUE – then it is quite possible that an apples-to-apples price evaluation would lead to an evaluated price for PSI that is *actually higher* than Pearson VUE's evaluated price.

first-free-re-take examination requirement, then PSI has been provided an unfair advantage over Pearson VUE.

An accurate accounting of the total number of free re-takes each year is *critical* to vendors' cost calculations for administering this program. To address this concern, Pearson VUE requested guidance from SFAA DPS during the Q&A period.

The Price Proposal (RFP, pg. 22) states, "A producer, who fails an exam on their first attempt, will be given a second attempt free of charge. All subsequent re-takes will be charged." (Questions 2 to 4)

2. Can SCDOI clarify if only the eleven (11) Producer exams eligible for one free retake, or all exams, including Adjusters and Appraisers?
States Response: This is for producer exams only. Please see revision in IV. INFORMATION FOR OFFERORS TO SUBMIT, PRICE PROPOSAL
3. Can the SCDOI provide the total number of free re-takes that were provided by its existing vendor, broken down by exam line, in 2021?
States Response: See attachment 5
4. According to SCDOI's existing vendor's handbook, all exams—both initial and retake—are listed as \$45. Can SCDOI clarify if this is in error, or whether its currently vendor is referring to subsequent retakes (e.g., 3rd or 4th attempt) after the initial retake (second attempt)?
States Response: This is referring to subsequent retakes after the first retake.

See Amended Solicitation, p. 51.

Unfortunately, the information provided by SFAA DPS did not include the total number of *first-time* (i.e., free) re-takes, so Pearson VUE sent a follow-up question:

Thank you for providing Attachment 5 in response to our question regarding re-takes; however, Attachment 5 seems to include the total number of Producer exam re-takes (free and charged). Our original question regarding RFP, p. 23 hoped to clarify the number of free, first-time re-takes specifically. Can the SCDOI provide the breakdown of first-time Producer exam re-takes?

(Attached hereto as "Exhibit K").

SFAA DPS responded by sending Pearson VUE an attachment with test administration numbers, but, unfortunately, it only listed the total number of first-time test taker attempts and the total number of *all* re-take attempts. (Attached hereto as "Exhibits K & L"). The very important first time (i.e., free) re-take attempts were not accounted for separately in the counts provided.

As a result, Pearson VUE had no choice but estimate the total number of first-time free retakes, which put Pearson VUE at a disadvantage during the bid process. Pearson VUE's estimate is that up to 3,000 free retakes would need to be honored annually, based on the pass rates for the State's exams. To date, Pearson VUE is uncertain whether this number is accurate, and, therefore whether Pearson VUE's cost proposal was based on accurate data that was available to PSI but not to Pearson VUE. See e.g., Guzar Mirbachakot Transp. v. United States, 104 Fed. Cl. 53, 67 (2012) (finding that an agency's decision to waive responsiveness criteria for all but one offeror amounted to "unequal treatment [that] was quintessentially arbitrary and capricious."); see also J.C.N. Constr., Inc. v. United States, 107 Fed. Cl. 503, 513 (2012) ("It is well-established that a contracting agency must treat all offerors equally, evaluating proposals evenhandedly against common requirements and evaluation criteria." . . . "A fundamental principle of government procurement is that [the agency] treat all offerors equally and consistently apply the evaluation factors listed in the solicitation."); L-3 Communc's EOTech, Inc. v. United States, 83 Fed. Cl. 643, 653 (2008) ("Waiver of a mandatory requirement of the solicitation for the benefit of only one offeror invalidates a procurement decision."). Accordingly, SFAA DPS should rescind the NOIA, even if Pearson VUE's cost scoring complied with South Carolina law, and even if PSI was not disqualified, as the award to PSI under the circumstances would have been the result of unequal treatment of the responding bidders.

III. CONCLUSION

For the reasons stated above, SFAA DPS' issuance of the NOIA to PSI was improper and Pearson VUE's Protest should be sustained.

RESERVATION OF RIGHTS

Pearson VUE reserves the right to supplement or amend this Protest to the extent additional, different, or more complete information becomes available.

RELIEF REQUESTED:

Pearson VUE seeks rescission of the NOIA and re-evaluation of the proposals consistent with this Protest.

- 1. Stay of Procurement:** Pearson VUE seeks an immediate stay of the procurement, including of negotiating and/or executing a contract with the apparently successful bidder (S.C. Code Ann. § 11-35-4210(7));
- 2. Rescission of the NOIA:** Rescission of the NOIA; *and*
- 3. Re-evaluation:** Re-evaluation of the proposals consistent with the Solicitation and South Carolina law, and award to Pearson VUE.

Dated: June 17, 2022

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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.