

HENRY MCMASTER, CHAIR
GOVERNOR
CURTIS M. LOFTIS, JR.
STATE TREASURER
BRIAN J. GAINES
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES
DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018
JOHN ST. C. WHITE
MATERIALS MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HARVEY S. PEELER, JR.
CHAIRMAN, SENATE FINANCE COMMITTEE
BRUCE W. BANNISTER
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE
GRANT GILLESPIE
EXECUTIVE DIRECTOR

Protest Decision

Matter of: uWork.com, Inc. dba Covendis Technologies
File No.: 2023-209
Posting Date: September 11, 2023
Contracting Entity: State Fiscal Accountability Authority
Solicitation No.: 5400024260
Description: STC - Managed Services Provider

DIGEST

Protest that awarded Offeror was nonresponsive and the evaluation was biased and flawed is denied. The protest by uWork.com, Inc. dba Covendis Technologies (CT) is attached and 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	01/20/2023
Amendment 1 Issued	02/22/2023
Amendment 2 Issued	03/16/2023
Intent to Award Posted	06/15/2023
Intent to Protest Received	06/22/2023
Protest Received	06/30/2023

The State Fiscal Accountability Authority (SFAA) issued this Request for Proposals to establish a statewide term contract for a managed services provider on January 20, 2023. Amendment 1 was issued on February 22, 2023, modifying the solicitation, and answering vendor questions. Amendment 2 was issued on March 16, 2023, again modifying the solicitation, and answering vendor questions. Proposals were received from Computer Aid, Inc. (CA), CT, Knowledge Services (KS) and OST, Inc. (OST) on April 3, 2023. An evaluation committee of three state employees determined that the proposal from KS was the most advantageous to the State and an Intent to Award was posted to KS on June 15, 2023. CT filed an Intent to Protest on June 22, 2023, followed by its formal protest on June 30, 2023. CT protests that KS was not responsive to material requirements of the solicitation, the evaluation was flawed, and the evaluators were biased.

This is the second solicitation for these same services. The award resulting from the first solicitation was protested by CT alleging three instances of an unfair and unequal evaluation and a lack of adequate evaluation documentation. The CPO ruled that during the evaluation, unpublished sub criteria were assigned to three of the evaluation criteria and there was evidence of an inconsistent rounding of scores. The award to KS was cancelled and the procurement was remanded to SFAA for procurement in accordance with the Code. The CPO did not review or address other CT issues of protest. See *Protest of Covendis Technologies*, CPO Case 2023-202. SFAA issued this new solicitation to include the same four evaluation criteria along with the sub criteria that were added during the previous evaluation. This solicitation was issued by the same procurement officer, evaluated by the same committee, and awarded to the same offeror.

CT's current protest makes multiple references to the previous procurement and protest. However, each procurement, including any associated protests, stands alone, and is reviewed in accordance with the Code, Regulations, and applicable case law notwithstanding any previous similar procurements. References to the previous procurement or protest that draw conclusions or inferences about issues or evidence not reviewed or addressed in the CPO's previous decision will be given no weight in the current review.

DISCUSSION

CT first protests that the KS proposal was not responsive to a material requirement of the solicitation and that the Procurement Officer's waiver of the requirement was improper:

The agency prejudiced all other offerors when it evaluated and then accepted Knowledge Services' offer despite Knowledge Services' noncompliance with a material Solicitation requirement; namely, Knowledge Services failed to submit a USB drive in accordance with the Solicitation's requirements. The Solicitation clearly and unambiguously required that all offerors "must submit an electronic copy or copies (if specified) on a USB drive by the proposals due date and time." Attachment 15, 15. This Solicitation requirement was new and different from the prior Solicitation, indicative that the agency included it purposely and treated it as mandatory.¹

The solicitation, with modifications, was reproduced as Amendment 2 and included the following instructions to bidders:

ELECTRONIC COPIES - REQUIRED MEDIA AND FORMAT (MODIFIED)

In addition to your original offer, you must submit an electronic copy or copies (if specified) on a USB drive by the proposals due date and time. Your business and technical proposals must be on separate USB drives. Every USB drive must be labeled with the solicitation number and the offeror's name and specify whether its contents address technical proposal or business proposal. The electronic copy must be identical to the original offer. File format shall be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password.

It is preferred that the electronic copy of each proposal be in one .PDF file. The result will be that the State receives one .PDF file for the complete technical proposal, and one .PDF file for the complete price proposal and, if necessary, one .PDF file for the redacted technical proposal.²

[Amendment 2, Page 15] (emphasis added)

KS submitted its full proposal electronically through the South Carolina Enterprise Information System. (SCEIS) on April 3, 2023. A copy of the cover page, signed by KS' general counsel, was attached to the electronic submission making this a binding offer. KS failed to provide an exact copy of that filing on a USB drive. The Procurement Officer waived that failure as a minor informality or irregularity under Section 11-35-1520(13):

¹ CT's reference to the previous solicitation inferring added significance to this requirement is disregarded as each procurement stands alone in this review.

² This paragraph does not indicate where or to whom the USB drive is to be delivered or whether the USB drives must be in a sealed envelope or hand delivered.

Offeror failed to provide USB thumb drives for the required Technical and Price Proposals. The required electronic documents were uploaded to the SCEIS portal by the required bid submittal date of April 3, 2023.

In accordance with the SC Procurement Code §11-35-1520(13)(a), Knowledge Services' failure to furnish electronic copies on a USB drive is hereby waived as a minor informality. The Procurement Review Panel has held that "a requirement is not 'essential' simply because it is stated in mandatory terms." Appeal by 3M Company, Panel Case No. 2022-3.

[Written Determination, Page 2]

CT raises several issues related to this sequence of events:

- The requirement was mandatory because it uses the language "must" and any proposal not meeting a mandatory requirement must be eliminated from consideration,
- The waiver as a minor informality or irregularity was improper because it was prejudicial to the other bidders
- The Procurement Officer's written determination was improper because it was made *Post Hac*.

The Procurement Review Panel (PRP) offered the following guidance regarding mandatory requirements and the use of mandatory language:

A "responsive bidder or offeror" is defined in § 11-35-1410(7) as "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or requests for proposals." Section 11-35-1520(13) of the South Carolina Consolidated Procurement Code provides for the waiver or curing of minor informalities and irregularities in bids and proposals? That section provides in relevant part:

A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders. The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the State.

Section 11-35-1520 then sets forth a non-exclusive list of examples of minor informalities or irregularities.

The Panel has read these two sections of the Procurement Code together to arrive at the following conclusions:

In order to be responsive, a proposal need not conform to all of the requirements of the RFP; it must simply conform to all of the essential requirements of the RFP [B]ecause the Code requires rejection of a proposal when it fails to meet an essential requirement but allows waiver of an immaterial variation from exact requirements, a requirement is not "essential" if variation from it has no, or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured. Waiver or correction of a variance from such a requirement is appropriate under the Code when relative standing or other rights of the bidders are not prejudiced.

Protest of National Computer Systems, Inc., Case No. 1989-13

In the *National Computer* case, the Panel determined that a requirement is not "essential" simply because the RFP states that it is mandatory.

Thus, any analysis of what is waivable as a minor irregularity includes two parts, whether the irregularity has more than a trivial effect on price, quality, quantity, delivery or performance of the contract and whether the waiver and cure of the minor irregularity is prejudicial to the other bidders.

Protests of Coastal Rapid Public Transit Authority and Anderson-Oconee Council on Aging,
Case 2000-4

The PRP later emphasized its caution about the use of mandatory language:

The Panel takes this opportunity to reiterate its statement in *Protest of Gregory Electric Company*, Case No. 1989-17(II) and once again cautions the State's procuring agencies to- review solicitation documents carefully to insure that only essential requirements are stated in absolute or mandatory terms so as not to [reduce] the effect of such language upon the [offerors].

See *Protest of PS Energy, Appeal by PS Energy*, Case 2002-9

In addition, the PRP addressed a very similar issue in the *Protest of National Computer Systems, Inc.*, Case 1989-13:

The sole issue to be decided by the Panel is whether the requirement of section 2.06.03 that "As part of their Technical Proposal. the Offeror must submit copies of the paper set that is provided in the RFP Supplement to demonstrate copying quality" is an essential requirement of the RFP, the failure to comply with which requires rejection, or a nonmaterial requirement which can be waived and corrected....

The Panel finds that DRC's failure to submit the required copy set with its proposal does not render its proposal nonresponsive because the omission has no, or merely a trivial or negligible, effect on price, quality, quantity, or delivery of

the performance of the services being procured. Further, the Panel finds that allowing DRC to submit the required copyset at this time or waiving the requirement altogether is not prejudicial to NCS and is advantageous to the State.

KS submitted a binding offer through SCEIS prior to the time required to submit proposals. The submission of an exact copy after the fact would have no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract. The second part of this examination is whether a correction or waiver of the requirement would be prejudicial to bidders. CT argues that waiver of this requirement was prejudicial to the other bidders:

As noted above, the Solicitation required offerors to submit a USB drive by the proposal submission deadline (in other words, a physical delivery). Critically, the proposals on the USB drive had to be “identical to the original offer.” Attachment 15, 15. The offer was also required to be uploaded to the “web-based on-line bidding system.” *Id.* at 16. Accordingly, this USB drive requirement meant offerors could not simply work on their proposals up until the point they needed to upload their proposal to the procurement website. Instead, they had to complete their work earlier so as to ensure the identical proposal could be copied on a USB drive and the USB drive could be dispatched with enough time to ensure timely delivery. In other words, the USB drive requirement effectively shortened the time available for proposal preparation for those offerors that complied with the requirement.

Accordingly, unlike all other offerors, Knowledge Services has not only been permitted to avoid a material Solicitation requirement, because they did not timely submit a USB drive, but it was also improperly given extra time by the agency. This plainly is prejudicial and disparate treatment, and material unfairness. This is made starkly apparent by a hypothetical. Had the agency issued a solicitation that stated “all offerors have to submit proposals on a USB drive by [date], except for Knowledge Services, which may simply upload its proposal electronically,” there can be no doubt that such a solicitation would be wholly improper. Such a Solicitation would plainly be prejudicial and would give Knowledge Services an unfair competitive advantage in the form of more time for proposal preparation effort. *See Siemens Hearing Instruments*, B-225548, 1986 WL 64560 (Comp. Gen. Dec. 30, 1986) (the “late proposal rule simply prevents one offeror from obtaining an unfair advantage over a competitor that might accrue because that offeror is permitted to submit a proposal later than the deadline established for all competitors”). By waiving the requirement, that is precisely what the agency has effectively done here. It is wrong and should be corrected. Knowledge Services should have been eliminated and its proposal never evaluated.

As noted above, the Solicitation required offerors to submit a USB drive by the proposal submission deadline (in other words, a physical delivery). Critically, the proposals on the USB drive had to be “identical to the original offer.” Attachment 15, 15. The offer was also required to be uploaded to the “web-based on-line bidding system.” *Id.* at 16. Accordingly, this USB drive requirement meant offerors could not simply work on their proposals up until the point they needed to upload their proposal to the procurement website. Instead, they had to complete their work earlier so as to ensure the identical proposal could be copied on a USB drive and the USB drive could be dispatched with enough time to ensure timely delivery. In other words, the USB drive requirement effectively shortened the time available for proposal preparation for those offerors that complied with the requirement.

Accordingly, unlike all other offerors Accordingly, unlike all other offerors, Knowledge Services has not only been permitted to avoid a material Solicitation requirement, because they did not timely submit a USB drive, but it was also improperly given extra time by the agency. This plainly is prejudicial and disparate treatment, and material unfairness. This is made starkly apparent by a hypothetical. Had the agency issued a solicitation that stated “all offerors have to submit proposals on a USB drive by [date], except for Knowledge Services, which may simply upload its proposal electronically,” there can be no doubt that such a solicitation would be wholly improper. Such a Solicitation would plainly be prejudicial and would give Knowledge Services an unfair competitive advantage in the form of more time for proposal preparation effort.

Without specifics, CT identified the time required to deliver the USB drive as the benefit that was prejudicial to the other offerors. Offerors were afforded weeks to prepare their proposals for this multimillion-dollar contract. CT gave no indication of how far in advance of the proposal submission deadline an offeror would typically submit its proposal. No indication of the actual or hypothetical delivery time involved in this case. CT did not contrast the USB delivery time with the time required to prepare these proposals.

In order for the waiver to be prejudicial to the other offerors, it must have conferred more than a trivial or negligible benefit. The electronic proposal had to be completed prior to submission in SCEIS. It is difficult to imagine that an Offeror would wait until the last minute to submit its proposal in SCEIS. Only when the original proposal is complete can an exact copy be made. Depending on the size of the document, a copy can be transferred to a USB drive in a matter of seconds and, at most, less than a few minutes. The original version must be completed in

sufficient time allow for physical delivery which, depending on your physical location, could be accomplished in a matter of minutes or require a day or more.

CT provides no estimates or projections of the actual times involved. CT alleges nothing it would have changed differently had it not delivered a USB drive. Instead, CT relies on an irrational hypothetical to argue that the waiver was unfair and prejudicial to the other offerors. The Procurement Officer's determination is final and conclusive unless it is clearly erroneous, arbitrary, capricious or contrary to law. S.C. Ann. §11-35-2410 CT has the burden to prove by a preponderance of the evidence that the Procurement Officer incorrectly determined that the benefit conferred by the waiver was trivial or negligible and not prejudicial to the other offerors. CT failed to meet its burden.

CT also argues that the waiver was improper because the written determination is dated after the Intent to Award was posted. The Intent to Award was posted on June 15, 2023, and the written determination was dated June 19, 2023. CT argues that the fact that this determination was made after the Intent to Award was issued should be disqualifying:

The agency's belated determination that Knowledge Services' failure to timely provide a USB drive was a minor informality that could be waived was arbitrary and capricious because it prejudiced other offerors by allowing Knowledge Services additional time to complete its proposal. Moreover, the agency only made its determination that Knowledge Services' failure to submit a USB in compliance with the Solicitation was a "minor informality" after it (1) issued the Intent to Award Notice and (2) Covendis brought this material noncompliance to the agency's attention. Attachment 4; Attachment 18. This *post hac* waiver is improper and patently unfair. Moreover, it is indicative of other agency actions in evaluating the proposals that failed to conform to the Solicitation, harming Covendis.

The fact that the KS proposal was evaluated and ranked as the most advantageous to the State implies, at best, a waiver of this requirement during the evaluation process and at worst reveals that the requirement was unnecessary to begin with. Section 11-35-1520(13) requires the determination to waive or cure a minor informality be in writing. While the completion of all procurement related documentation prior to posting an Intent to Award is preferred, the Code does not require the written determination to be completed prior to posting an award or intent to

award. The Code does establish a time that the file must be complete in Section 11-35-410(F) which requires availability of the file for inspection within five days of receipt of a request made after posting of the Intent to Award:

If requested in writing before a final award by an actual bidder, offeror, contractor, or subcontractor with regard to a specific intended award or award of a contract, the procurement officer shall, within five days of the receipt of any such request, make documents directly connected to the procurement activity and not otherwise exempt from disclosure available for inspection at an office of the responsible procurement officer.

In this case, the determination was completed within four days of the posting of the intent to award and was available for review by CT within the time required by the Code. There was no injury in completing this determination after posting of the intent to award and no violation of the Code.

CT next protests the evaluation panel failed to follow the evaluation process established in the solicitation and panel instructions, and the Panel did not consider the offerors' demonstrations in line with the Solicitation's requirements when scoring the proposals.

CT first argues:

The Procurement Officer provided detailed instructions to the Panel on April 10, 2023 that was not followed, resulting in an unfair and biased process. *See* Attachment 10. The Procurement Officer and Panel failed to abide by the prescribed process in the following ways:

- The Procurement Officer failed to provide the points for the price proposal to the Panel. The Panel Instructions provide that the Procurement Officer may decide whether "the points for price will ... be figured by the chairperson of their designee based on a formula supplied by the SPO, or subjectively by each evaluator." Attachment 10, ¶ 6. Under this Solicitation, the Procurement Officer decided that he would "provide the points for the price proposal to the panel," as communicated in the Initial Evaluation Panel Meeting email. Attachment 17. However, each evaluator's score sheets contained different scores for the same offerors, which means the Procurement Officer failed to provide the points. *See* Attachment 19 (9 out of 10 points awarded to Covendis for price); Attachment 20 (8 out of 10 points); Attachment 21 (7 out of 10 points).

The procurement officer sent an email to the evaluation panel members on April 10, 2023, scheduling the first meeting of the panel and explaining that the panel members would be briefed

on the evaluation process, ethics, disclosure restrictions, and representations regarding integrity.

The email also included an outline of the evaluation process that included the following statement:

The procurement officer will then provide the points for the price proposal to the panel.

[PO email to panel, page 4]

One of the documents referenced in the email was the Panel Instructions. The Panel Instructions included the following statement:

If price was an initial evaluation criteria, the points for price will either be figured by the chairperson or their designee based on a formula supplied by the SPO, or subjectively by each evaluator, as instructed by the Procurement Officer.

(emphasis added)

The Panel Instructions provide for two methods to evaluate price, either through a mathematical formula or subjectively. The PRP has provided some guidance about the use of the mathematical formula to allocate points for price. First, that there is “nothing unfair or unreasonable in crediting each proposal for its price in this objective way.”³ Second, that the comparison of price must have a rational basis. S.C. Code §11-35- 2410; see *In Re: Appeal by GPS Insight, LLC*, Panel Case No. 2021-1 (finding the evaluation methodology for comparing prices lacked a rational basis). Third, that use of the formula is arbitrary when the points awarded bear little relation to the actual costs to the State:

In this case, while the Panel recognizes that the embedded formula was objective and equally applied to both offerors, the formula is arbitrary, because the points awarded bears little relation to the actual costs to the State.

In Re: Appeal by PSI Services LLC, Case 2022-5

In this procurement, Offerors were to provide a proposed hourly rate table for applicable work under IT Temporary Services Augmentation Contracts, Small Application Development Contracts, and a transaction fee. There is no calculation of the total potential value to the State without which there is no rational basis for use of the formula.

³ *In Re: Protest of Polaroid Corporation*, Case 1988-12

The second alternative in the Panel Instructions is a subjective evaluation by each evaluator. The solicitation included the following evaluation factor for the price/business proposal:

3. Price/Business Proposal:

The degree of the Offeror's proposed Price-Business Proposal to meet or exceed the requirements of this RFP that includes the following:

- a. Provide the Transaction Fee within the limit established in the RFP and complete a proposed Rate Table.

[Amendment 2, Page 36]

The bidding schedule and the evaluation criteria indicate that a subjective evaluation is the most appropriate alternative in this case and this, in fact, was the chosen evaluation approach.

Regardless of the preliminary indication that the Procurement Officer would allocate price points based on the formula, an appropriate evaluation methodology was employed in keeping with the purpose and policies of the Code and guidance from the Procurement Review Panel. This aspect of the protest is denied.

CT next protests that the evaluation panel "did not consider the offerors' demonstrations in line with the Solicitation's requirements when scoring the proposals." The fourth published evaluation criterion stated:

4. Demonstration:

The degree that the Offeror introduces key personnel to discuss the proposal and address questions as well as provide the live, real-time system demonstration to answer and demonstrate activities as described in the Proposal and by the panel. [06-6065-1]

[Amendment 2, Page 36]

CT argues:

The scoring meeting should have occurred after the offerors' demonstrations. Based on the Solicitation, the Panel members were supposed to be able to ask questions of the offerors. Additionally, the score sheets contain a "Pass/Fail" section for establishing whether the offeror's demonstration passed. Therefore, in order for the evaluators to fill out the score sheets, the scoring meeting would have to occur after the last offeror demonstration. However, according to the provided documentation, the scoring meeting occurred on May 11, 2023, and the last offeror demonstration was on May 30, 2023. Attachment 22 (scoring

“meeting minutes” dated May 11, 2023); Attachment 23 (Computer Aid Inc.’s demonstration meeting minutes dated May 30, 2023).

The initial scoring meeting was held on May 11, 2023. Demonstrations conducted on May 24, 25, 26, and 30. The evaluation committee met on May 30, 2023, to review the Demonstrations, and for Discussion & Scoring of Proposals (Demonstration portion).

Evaluator 1’s score sheets and comments are dated May 30, 2023, and included pass/fail designation with comments about each demonstration. The dates on Evaluator 2’s score sheets correspond to the dates of the respective demonstrations. The score sheets reflect a pass / fail designation and comments about each demonstration. Evaluator 3’s score sheets are all dated May 11, 2023, the date of the initial scoring meeting. However, each scoresheet reflects a pass / fail designation and comments about each demonstration indicating an undated modification to the score sheets after the demonstration. CT’s allegation that scoring was completed prior to completion of the demonstrations is not supported by the evidence. This issue of protest is denied.

Finally, CT protests that the use of the same evaluators that evaluated the previous solicitation introduced an inherent and improper bias that could not be cured and consequently the evaluation should be nullified, and the procurement cancelled.

CT argues:

The agency’s award was tainted by inherent bias because the Panel was made up of the same members as the 2022 Panel and the Panel members failed to evaluate each of the offerors fairly and equally. “The critical test for determining bias in an agency’s evaluation of proposals is whether all offerors were treated fairly and equally.” *Alan-Craig, Inc.*, B-202432, 1981 WL 23317, at 3 (Comp. Gen. Sep. 29, 1981). Bias is defined as “[a] mental inclination or tendency; prejudice; predilection.” *Bias*, Black’s Law Dictionary (11th ed. 2019). The type of bias at issue here is confirmation bias, which is “the fact that people are more likely to accept or notice information if it appears to support what they already believe or expect.” *Confirmation Bias*, dictionary.cambridge.org.

In connection with the 2022 Solicitation, the same panel had determined that Knowledge Services was essentially infallible, giving them a perfect 100 score. Attachment 25. The Protest Decision confirmed that this prior award was improper because the Panel had considered and imposed unstated evaluation

criteria. Attachment 9. The only way for the Procurement Officer to eliminate the potential for confirmation bias (namely, the tendency of the Panel to interpret the new proposals as confirmation that Knowledge Services was the best) was to constitute a new panel. This was not done.

In the previous procurement, the use of unpublished evaluation criteria invalidated the entire evaluation and rendered any allegations of flawed analysis, improper scoring, or inadequate documentation by the evaluators moot. No inference of evaluator bias can accrue from these unproven allegations from the previous protest. The fact that there were two procurements for the same services and the same Offeror was awarded in both cases does not, in and of itself, support a finding of confirmation bias. In addition, the scores from the two evaluations are not comparable.

The first evaluation and scoring were the result of a consensus of the evaluation committee. The result of a consensus evaluation indicates that the committee, as a whole, determined each proposal's final ranking. Three proposals were received. KS was the highest ranked proposal and the assignment of a perfect score for KS reflects that ranking. CT was the second highest ranked proposal overall receiving 82 out of a possible 100 points. OST was the third highest ranked proposal receiving 78 out of a possible 100 points. This does not mean that each evaluator agreed or had the same opinion about each proposal; it only means that, as a whole, they agreed on a final ranking.

Rather than using the consensus evaluation methodology from the first procurement, proposals were evaluated and ranked by each evaluator individually for this procurement. Four proposals were received: KS, CT, OST, and Computer Aid, Inc. (CA). KS was the highest ranked proposal overall followed by CA, CT, and OST in that order. KS was ranked highest overall by two of the evaluators. The third evaluator ranked CA highest overall. Two of the evaluators ranked CA second overall. All three evaluators ranked CT third highest overall and OST fourth overall.

CT points to the evaluation comments of Ms. Gillam, evaluator 1, to support its claim of bias:

Ms. Gillam noted in her evaluation sheet that she was concerned that Covendis' technical proposal, while it did provide state examples of similar size, included states that "appear to be located more in the Midwest/west coast region in the

US.” Attachment 21. First, the Solicitation did not establish any criteria or factor that required consideration of whether an offeror’s past performance was in the East Coast versus the West Coast states. See *In Re: Protest by Sperry-Rand Corporation and Tandy Corporation*, 1985 WL 667178, *9 (“A consideration of factors outside those listed in the Request for Proposal is inequitable, improper and violates Section 11-35-1530(7)”). Even though the Solicitation did not require consideration of the region that an offeror had previous performance in, Covendis provided three East Coast states as examples where it provided similar services that the Solicitation calls for, including Tennessee, Georgia, and Connecticut, in addition to other non-East Coast states. Attachment 26, 163-66. Knowledge Services, the successful offeror, also included Midwest and West Coast states in its proposal, but Ms. Gillam does not identify this information in her evaluation of Knowledge Services. Attachment 27, 162-64; Attachment 28.

Ms. Gillam also included in her notes that she had “concern if [Covendis is] adequately staffed to support the needs of SC and their system,” immediately followed up by “the offeror did indicate they would hire additional staff to support SC if selected.” Attachment 21. Ms. Gillam immediately answered her own concerns, making her score of Covendis’ qualifications criteria of 295 out of 40 points without any basis arbitrary and capricious. There is also no support for why Knowledge Services received 38 out of 40 points for the same section. See Attachment 28.

Ms. Gillam’s comments about her technical evaluation of CT state:

Technical Proposal

The vendor proposed using their in-house VMS solution which is security compliant and includes DR. The proposal had some references to time zones SC is not in for support hours. Their overall VMS solution meets the needs and included numerous dashboards to track contractors, payments, and vendors.

Qualifications

Key staff have been with the offer (sic) for a very long time. however concern if they are adequately staffed to support the needs of SC and their system. The offeror did indicate they will hire additional staff to support SC if selected. They also provided state examples of similar size however these appear to be located more in the Midwest/west coast region of the US.

(emphasis added)

Considering that Ms. Gillam indicated concern that support hours referenced time zones other than eastern time, her comment about mid-western and western references is reasonable. Ms. Gillam’s concern about support services is also reflected in her comments about KS:

Technical Proposal

Proposal was well written and easy to understand and clearly demonstrated support of this solicitation. The solution in Fed Ramp and State Ramp and owned by offeror. This means they can make their own system modification to meet customer requests. They also demonstrated support staff to support their solution which is housed in the US and provide 24/7/365 support. The solution has numerous reports and ability to customize dashboards.

Qualifications

This vendor has extensive state experience with efforts of comparable size and scope. The offer (sic) has also migrated a state from Tapfin VMS solution to their solution. Staffing has been with the organization for a very long time along with number of staff to support their solution and services. Provided a customer service perspective and work with vendor as well as monitor vendor performance.

The evaluator's comments reflect factual and legitimate concerns and observations and are not indicative of bias either for against a particular offeror.

CT next points to evaluator 2, Ms. Dobrenen's scoring to support its claim of bias:

Ms. Dobrenen gave Knowledge Services a perfect score under the Qualifications criteria, while docking Covendis two points. Attachment 29 (Knowledge Services score card); Attachment 20 (Covendis score card). Ms. Dobrenen's notes state concern with Covendis' staffing ability: "I'm still concerned about their ability to staff up the office locally. Hiring people and getting them trained while getting us trained all within 60 days seems like a big lift." Attachment 20. However, Covendis and Knowledge Services' technical proposals contain similar plans to hire new local staff within the first 60 days. Covendis' proposal said they would establish a local office with "five (5) to six (6) full-time staff on site." Attachment 26, 167. Knowledge Services also proposed to hire at least 4 new local staff, but Ms. Dobrenen did not mention this as a concern, but instead said "They seem to include a much larger team for implementation and thus, I have confidence in their ability to complete this task successfully." Attachment 30, 7 (providing a figure of the "Dedicated Team"). This confidence in Knowledge Services and concern for Covendis shows bias because both Knowledge Services and Covendis identified the same number of key staff that will support the implementation and program management. Attachment 26, 169-84; Attachment 27, 165.

The Qualifications criterion had two sub criteria, each allotted 20 points. Ms. Dobrenen awarded CT 20 points for the first sub criteria and 18 for the second:

Criteria	Points Allowed	Points Awarded
Addresses and reflects the qualifications requirements in the Solicitation	20	18
References reflect good standing with other clients and positive performance reports; offeror displays history of performance on contracts of similar size and scope	20	20

40

38

Ms. Dobrenen provided the following observations about CT's proposal:

Qualifications

I am still concerned with their ability to staff up the office locally. Hiring people and getting them trained while getting us trained all within 60 days seems like a big life.

Page 168 - not sure what PST has to do with us but if they are not available until 11 am our time, that might be problematic.

In addition to a local presence, support for help desk, VMS operations, Supplier onboarding, training, and payments processing, is based out of Atlanta, Georgia. While normal business hours are 8 am to 8 pm PST, Monday through Friday. On-call emergency support is available outside of these hours.

Ms. Dobrenen also had an extensive explanation for only awarding CT 45 of the 50 points available for the technical proposal:

TECHNICAL PROPOSAL

Pay suppliers within 1.5 days of receiving our payment

Page 25 – are they allowed to do this

“For example, SOW projects are notorious for failure at the end of the project, when the individual units that have been tested and accepted have been assembled and integrated. Retainage is an important strategy that helps customers manage risk, especially for large SOW projects. Covendis is able to automatically withhold a small amount (e.g. 10% from each progress payment of individual units) which is only paid out once the overall project has been completed and tested.”

Page 34 - Customizing the process for each UGU? Don't we want the whole state to have the same configuration? Own Portal per UGU? This seems like a lot of extra overhead.

This example pg 36 (and listed gain on page 86) of rate information is quite confusing. It took me more time than it should to decipher what this meant.

	Avg	Min	Max				
Rates for Similar Titles - (Bid and Contracted)	B	C	B	C			
Full Stack .NET Development Engineer	78	71	60	90	80		
Engineer	44	47	30	35	75	70	
Civil Software Support Engineer	71	66	45	60	85	75	
Network Administrator	3	64	68	50	66	75	70
Network Cyber Security Engineer	81	83	64	78	85	85	

*This information is provided to help assess market rates for similar position titles. Please contact Covendis for a detailed rate review

RateTrax : Real-time pricing information

Nearly 50%? More like 64% - page 82...there are several times the proposal just doesn't make sense or has errors (data, grammar, etc.)

Covendis Supplier Network: Nearly 50% of SC Suppliers Already Work with Covendis

Agency	South Carolina Suppliers in the Covendis Network	Contracts Held by Small or Disadvantaged Suppliers	Average Tenure	Female 10+ years	Qualifying Experience
459	124	50%	8 years	19%	18 years

They don't do staffing.

Covendis Program Manager does EVERYTHING during implementation? (page 90) but then on pages 108-109, the implementation team includes president, etc... and it looks like the implementation developer does all the work. I'm not sure they are staffed appropriately to do all this in 60 days.

Page 109 – Typo “or” should be “of” ...and we only indicated 197 registered suppliers in the RFP – where did they get 259?

- UGUs – UGU reprints, invoices, and meetings with managers and on-site resources.
- Current Suppliers – Covendis already has relationships with many of the suppliers providing resources for the state. Covendis has done business with or has active contracts with 124 of the 259 registered South Carolina Suppliers

Market Rates review seems to be utilizing their own data (Rate Trax) along with supplier surveys and CPI. There does not appear to be any regional unbiased reference or even the government EPI (rather than CPI)

The evaluator has expressed reasonable justification for her ranking of the CT proposal. The PRP has provided the following guidance concerning evaluations:

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.

See In Re: Protest of Transportation Management Services, Inc. Appeal by Transportation Management Services, Inc., Case 2000-3

The evaluators provided sound reasoning and observations in their evaluations. CT has failed to meet its burden of proving by a preponderance of the evidence that this evaluation was arbitrary or capricious or that the evaluation committee members were biased.

Protest Decision, page 19
Case No. 2023-209
September 11, 2023

DECISION

For the reasons stated above, the protest of uWork.com, Inc. dba Covendis Technologies is denied.



Michael B. Spicer
Chief Procurement Officer

Columbia, South Carolina

Protest Decision, page 20
Case No. 2023-209
September 11, 2023

Attachment 1



June 30, 2023

VIA Email

Chief Procurement Officer
Information Technology Management Office
1201 Main Street, Suite 601
Columbia, SC 29201
protest-itmo@itmo.sc.gov

Delbert H. Singleton, Jr.
Director, Procurement Service Division and Authority Secretary
Division of Procurement Services (DPS)

Kimber Craig, CPPO
Director of Agency Sourcing; Deputy CPO

RE: Protest of Notice of Award Under Solicitation No. 5400024620

Dear Chief Procurement Officer:

Pursuant to S.C. Code Ann. § 11-35-4210, Covendis Technologies (“Covendis”) hereby protests the June 15 Intent to Award notice (the “Intent to Award Notice”) under Solicitation No. 5400024620, STC-MANAGED SERVICES PROVIDER (MSP) (the “Solicitation”), issued by the State Procurement Office’s Information Technology Management Office (the “procuring agency” or “agency”). As established below, the determination that award to Knowledge Services was most advantageous was clearly erroneous, arbitrary, capricious, or contrary to law because the government did not conduct an evaluation of offerors that was fair, reasonable, and consistent with the Solicitation.

There were multiple agency failures here. First, the agency failed to enforce a mandatory and material Solicitation requirement. The agency’s failure prejudiced Covendis and arbitrarily resulted in disparate treatment, benefitting Knowledge Services. Second, the Procurement Officer’s decision to waive this mandatory material requirement as a so-called “minor informality” was clearly erroneous and contrary to law. Third, the records provided to Covendis after the Intent to Award Notice was issued establish that the government failed to evaluate proposals as the Solicitation required, which resulted in competitive harm to Covendis because it was not selected for award. Fourth, the records establish the evaluation panel (the “Panel”) suffered from bias, which further harmed Covendis and cannot be remedied absent a new evaluation panel and re-evaluation of the responsive proposals.

For all of these reasons, and as established in detail below, Covendis has identified material grounds for protest that should be sustained and Covendis requests that the Intent to Award Notice



June 30, 2023
Page 2

be canceled, Knowledge Services' offer be eliminated, and the agency be directed to constitute a new evaluation panel to perform an evaluation in accordance with the South Carolina Procurement Code and Solicitation, and issue a new award decision.¹ S.C. Code § 11-35-4310(2)(a), (c). Alternatively, Covendis asks that a new solicitation be issued so that these defects in the procurement process can be appropriately remedied.

Procedural Matters

This protest is submitted by Covendis Technologies, located at 200 Walker Street SW, Suite B, Atlanta, GA 30313. Covendis requests that all correspondence relating to this protest be sent to the undersigned at the address set forth above.

Covendis is an actual bidder under Solicitation No. 5400024620 who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). But for the alleged procurement errors, Covendis would have a substantial chance for award. As such, Covendis is an interested party whose direct economic interest would be affected by the award of a contract under the subject Solicitation.

On June 15, 2023, the agency sent a letter notifying Covendis of its Intent to Award and that Covendis was not the intended awardee. Attachment 1. On June 22, 2023, within seven business days of the Intent to Award Notice, Covendis timely submitted its written Notice of Intent to Protest. Attachment 2. This protest is submitted within fifteen days of the date the Intent to Award Notice was issued. *See id.* Accordingly, this protest is timely submitted under S.C. Code § 11-35-4210(1)(b).

On June 15, 2023, following its receipt of the Intent to Award Notice, Covendis submitted a Freedom of Information Act ("FOIA") request to the Procurement Officer. Attachment 3. Covendis' FOIA request sought all records releasable under FOIA relating to the procurement. Attachment 3. On June 16, 2023, Covendis received the first delivery of records under the FOIA request. Later on June 16, 2023, Covendis received a supplemental production, and on June 19, 2023, Covendis received the final production which included one item, Memo For Record Determination of a Minor Informality. Attachment 4.

On June 20, 2023, Covendis sent a request to the Procurement Officer asking for the Panel's notes and pencil scores. Attachment 5. In response, Stephen Taylor, the procurement officer, stated that he did "not have access to the personal notes from the Panel members as it is not required by the Procurement Officer, nor part of the procurement file." *Id.*

¹ Alternatively, as the deficiencies with the proposed award to Knowledge Services are similar to those in the 2022 Solicitation award, the CPO may provide the same remedy and cancel the award and rebid the Solicitation with a new panel. S.C. Code § 11-35-4310(2)(b).



June 30, 2023
Page 3

Background

A. Covendis Protested the 2022 Solicitation On Similar Grounds

Prior to the issuance of the subject Solicitation², the Information Technology Management Office (“ITMO”) had solicited proposals and issued a notice of intent to award a contract to Knowledge Services for the same services sought in this Solicitation. *See* Attachment 6 (the “2022 Solicitation”). On October 31, 2022 and November 4, 2022, Covendis subsequently protested the notice of intent to award on the grounds that the agency unfairly and unequally evaluated and rated offerors for the contract award. *See* Attachment 7; Attachment 8 (supplement to the original protest). Covendis’ protest pointed out instances where the 2022 Solicitation’s panel (the “2022 Panel”) showed improper preference towards Knowledge Services by awarding them “numerous additional points based on criteria that was not included in the Solicitation,” which resulted in giving Knowledge Services a perfect score of 100, and rounding down Covendis’ scores while rounding up other offeror’s scores. *See* Attachment 7, 4-5; *see also* Attachment 9 (Protest Decision finding that the 2022 Panel’s rounding down of Covendis’ 4.5 while rounding up OST’s 3.5 was “an inconsistent and arbitrary application of rounding”).

On December 19, 2022, the Chief Procurement Officer (“CPO”) issued a Protest Decision finding that the evaluation of proposals was flawed and violated S.C. Code, granting Covendis’ protest, and cancelling the award to Knowledge Services. *See* Attachment 9.

B. Agency Re-issued a Solicitation for Same Services as 2022 Solicitation Using the Same Evaluation Panel

Following the December 19, 2022 Protest Decision, the agency issued Solicitation No. 5400024620 on January 20, 2023. Under the Solicitation, the evaluation of offers would be performed by an evaluation panel. The Panel was “to provide input and guidance in the selection of a vendor to fulfill the needs of the State as set forth in the RFP.” Attachment 10. Further, each Panel member was responsible for “provid[ing] an impartial, unbiased evaluation of each and every proposal according to the evaluation criteria contained in the RFP.” *Id.* Importantly, in constituting the Panel, the very same individuals who had served on the 2022 Panel were appointed despite any documented rationale or basis. *See* Attachment 11 (listing the Panel members for the Solicitation); Attachment 12 (listing the 2022 Panel members). In other words, the same individuals who had showed improper preference towards Knowledge Services and failed to comply with applicable law in the context of the 2022 Solicitation were asked to serve on the Panel for this Solicitation.

In the Solicitation, the ITMO solicited proposals for a Statewide Managed Service Provider (“MSP”) to utilize a web-based Vendor Management System (VMS) to manage, monitor, track and report on the State professional services contract(s) to include, but not limited to, the

² Solicitation No. 5400024620 was issued on January 20, 2023, with subsequent modifications on February 22, 2023 (Amendment 1) and on March 16, 2023 (Amendment 2). *See* Attachment 13 (Original Solicitation), Attachment 14 (Amendment 1), and Attachment 15 (Amendment 2).



June 30, 2023
Page 4

Information Technology (IT) Temporary Staff Augmentation contract, Small Applications Development contract, and other fee-based services as developed. Attachment 15,³ 5. The MSP would be responsible for providing management as specified in the applicable contracts through:

1. A VMS that is a “turn-key” system that provides job and project requisitions, time collection, invoicing, accounting and other related management services.
2. Providing a dedicated staff to manage the Supplier contracts, train, interface, advise and assist on the contract requirements with State Using Government Units (“UGUs”), Suppliers and the State Procurement Office.

Id.

C. The Solicitation Contained a New Material Requirement for Offerors to Submit Copies of Their Completed Proposal on a USB

Section II of the Solicitation provided detailed instructions to offerors, which included a requirement to submit electronic copies on a USB drive by the proposals’ due date and time⁴ in addition to submitting the bid online through the procurement website. Attachment 15, 15-16. In full, the USB requirement provided:

In addition to your original offer, you must submit an electronic copy or copies (if specified) on a USB drive by the proposals due date and time. Your business and technical proposals must be on separate USB drives. Every USB drive must be labeled with the solicitation number and the offeror’s name and specify whether its contents address technical proposal or business proposal. The electronic copy must be identical to the original offer. File format shall be compatible with Microsoft Office (version 2003 or later), or Adobe Acrobat or equivalent Portable Document Format (.pdf) viewer. The Procurement Officer must be able to view, search, copy and print electronic documents without a password.

It is preferred that the electronic copy of each proposal be in one .PDF file. The result will be that the State receives one .PDF file

³ References to the Solicitation language is taken from Amendment 2 because “the state has opted to issue a completely new document” and offerors were instructed to “discard the original solicitation document and use this document when preparing their on-line bids.” Attachment 15, 4.

⁴ The USB must have been delivered to the location on the Solicitation cover letter or to the State of South Carolina’s mail room by the offer deadline of April 3, 2023 at 11:00am. Attachment 15, 9 (“Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental body’s mail room which services that purchasing office prior to the opening.” (emphasis added)).



June 30, 2023
Page 5

for the complete technical proposal, and one .PDF file for the complete price proposal and, if necessary, one .PDF file for the redacted technical proposal.

Id. (emphasis in original). Importantly, this mandatory requirement calling for submission of the USB drive in the Solicitation was a notable change from the 2022 Solicitation. The 2022 Solicitation required electronic submission through the procurement website but did not require submission of a USB drive. *See* Attachment 16.

D. The Solicitation Contained Similar Evaluation Factors as the 2022 Solicitation and New Detailed Subcriteria to Evaluate Offerors

Section VI of the Solicitation provided the agency's evaluation factors and award methodology. The award was to be made to "the highest ranked, responsive and responsible offeror whose offer [was] determined to be the most advantageous to the State," based on the following evaluation criteria:

1. Technical Proposal;
2. Qualifications;
3. Price/Business Proposal; and
4. Demonstration (Pass/Fail only).

Attachment 15, 35. Within each of the above evaluation criteria, Section VI provided sub-criteria. *See id.*

Relevant to this protest, offerors were required to provide examples of the state and local government entities where the offeror acted as the MSP prime contractor. *See* Attachment 15, 30, 68 (in answering an offeror's question, the agency stated that it was "mandatory" that offerors provide the examples).

For the Price/Business Proposal, the Solicitation stated that proposals would be evaluated based on the following sub-criteria:

The degree of the Offeror's proposed Price-Business Proposal to meet or exceed the requirements of this RFP that includes the following:

1. Provide the Transaction Fee within the limit established in the RFP and complete a proposed Rate Table.

Attachment 15, 36.



E. The Procurement Officer Provided Detailed Panel Instructions Setting Forth the Evaluation Process

On April 10, 2023, the Procurement Officer issued panel instructions providing the process by which the Panel would evaluate offerors' proposals. These instructions were further reviewed at the "Panel Briefing" on April 19, 2023. Attachment 11. These instructions charged the Panel with "provid[ing] an impartial, unbiased evaluation of each and every proposal according to the evaluation criteria contained in the RFP." Attachment 10, ¶ 4. Further, the instructions stated that the Panel members were to complete and sign in ink score sheets, which would be "submitted at the conclusion of the selection meeting." *Id.* In the email delivering these instructions to the Panel, the Procurement Officer also provided the following instructions related to the "Scoring meeting":

- If applicable, the SME (subject-matter expert) will begin the discussions with the pros/cons of "Vendor A's" technical proposal
 - The panel will ask questions of the SME based upon his assessment
- The panel will openly discuss the pros/cons of Vendor A collectively
 - Each panel member will have the opportunity to discuss their comments for each proposal they're evaluating
 - Discussions must not include conversation of how you will score the proposals, who will get more/less points, etc.
 - Discussions should include conversations regarding how the proposal of Vendor A meets and/or exceeds the RFP requirements, or lack thereof
- The panel will then individually score and document their score of the technical proposal for Vendor A in ink
- If applicable, the SME (subject-matter expert) will begin the discussions with the pros/cons of Vendor A's qualifications
 - Repeat from above
- Once the process above has been completed for each proposal, the panel will confirm that their scores are correct and does not require any alteration.
- **The procurement officer will then provide the points for the price proposal to the panel.**
- The panel will tally their scores and input the total score.



June 30, 2023
Page 7

- The procurement officer will exit executive session; the panel will sign their score sheets, and will adjourn the meeting.

Attachment 17 (emphasis added).

Grounds for Protest

“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.” *In Re: Protest of Transportation Management Services, Inc., Appeal By Transportation Management Services, Inc.*, 2000 WL 33956154, at *2–3 (S.C. Procure. Rev. Panel 2000). A decision is arbitrary when it is “based alone upon one’s will, and not upon any course of reasoning and exercise of judgment; bound by no law; done capriciously or at pleasure, without adequate determining principle, nonrational; not governed by any fixed rules or standard.” *Hatcher v. S.C. Dist. Council of Assemblies of God, Inc.*, 226 S.E.2d 253, 258 (S.C. 1976). As discussed below, the agency’s award decision was clearly erroneous, arbitrary, capricious, and contrary to law because:

- A. The agency intends to make an award to an entity that patently failed to meet material requirements of the Solicitation and whose offer should have been eliminated from evaluation entirely as nonresponsive.
- B. Subsequent to the Intent to Award Notice, and only after Covendis inquired about the USB drive submission requirement and compliance, the Procurement Officer issued a *post hoc*, arbitrary, and contrary to law determination that Knowledge Services’ noncompliance with this Solicitation requirement was not material.
- C. The agency violated applicable law and the Solicitation because the Panel and the Procurement Officer failed to follow the process set forth by the Solicitation and Panel Instructions for evaluating the offerors.
- D. The agency’s award was tainted by inherent, unavoidable bias because the same panel that had previously violated South Carolina procurement law was designated as the Panel for this Solicitation and the facts establish that the Panel, predictably, failed to follow the prescribed proposal evaluation processes.

For all of these reasons, Covendis respectfully requests that the agency cancel the Intent to Award Notice, eliminate Knowledge Services’ offer, constitute a new panel, undertake a new evaluation, and render a new award decision.



June 30, 2023
Page 8

A. Knowledge Services Failed to Conform to the Material Requirements of the Solicitation and Its Offer Should Have Been Rejected as Nonresponsive

The agency prejudiced all other offerors when it evaluated and then accepted Knowledge Services' offer despite Knowledge Services' noncompliance with a material Solicitation requirement; namely, Knowledge Services failed to submit a USB drive in accordance with the Solicitation's requirements. The Solicitation clearly and unambiguously required that all offerors "must submit an electronic copy or copies (if specified) on a USB drive by the proposals due date and time." Attachment 15, 15. This Solicitation requirement was new and different from the prior Solicitation, indicative that the agency included it purposely and treated it as mandatory.

There is no dispute that Knowledge Services failed to submit an electronic copy of its proposal on a USB drive in accordance with the Solicitation. Attachment 4. All three other responsive offerors did submit USBs by the Solicitation deadline. Attachment 18 ("OST Inc, Covendis, and Computer Aid Inc. sent proposals on an USB drive in addition to the electronic copy in SCEIS").

On June 19, 2023, four days after issuing its Intent to Award Notice and after Covendis inquired about USB compliance by all offerors, the agency sent Covendis a "Memo for Record Determination of a Minor Informality" determining that Knowledge Services "failure to furnish electronic copies on a USB drive is hereby waived as a minor informality." Attachment 4. The Determination of Minor Informality agrees that the Solicitation uses the language "must" in describing the USB submission requirement. *Id.*; see also Attachment 15, 15 ("In addition to your original offer, you must submit an electronic copy or copies (if specified) on a USB drive by the proposals due date and time."). This constitutes a requirement that is "mandatory" and "[a]ny proposal not meeting a mandatory requirement **must** be eliminated from consideration." Attachment 10, ¶ 3.

Consistent with the above, applicable procurement regulations unambiguously state that "[a]ny bid which fails to conform to the essential requirements of the invitation for bids *shall* be rejected." S.C. R.19-445.2070 (emphasis added). The only exception to this mandate contemplated in the Code are minor informalities, which "may be cured or waived at the sole discretion of the Procurement Officer." Attachment 15, 12. In exercising that discretion, however, the Procurement Officer must avoid a decision that would be "prejudicial to bidders." S.C. Code § 11-35-1520.

It is important to note that a minor informality is a narrow concept and only includes those nonconformances that are "merely a matter of form or [are] some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not be prejudicial to bidders." S.C. Code § 11-35-1520(13) (emphasis added). The Code goes on to provide examples, such as the "failure of a bidder to return the number of copies of signed bids required by the solicitation" or "failure of a bidder to furnish its bidder number." *Id.*



The question presented, therefore, is whether the USB requirement was trivial or whether waiving it for one offeror has no prejudicial effect on other offerors. The answer is the USB requirement was mandatory and not trivial and waiving the requirement just for Knowledge Services is plainly prejudicial.

Essential to government procurement is fair treatment of offerors and the conduct of a competition that is free from disparate treatment. *See* S.C. Code § 11-35-20(2) (one of the underlying purposes of procurement code is “to foster effective broad-based competition for public procurement within the free enterprise system” and “ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement”).

As noted above, the Solicitation required offerors to submit a USB drive by the proposal submission deadline (in other words, a physical delivery). Critically, the proposals on the USB drive had to be “identical to the original offer.” Attachment 15, 15. The offer was also required to be uploaded to the “web-based on-line bidding system.” *Id.* at 16. Accordingly, this USB drive requirement meant offerors could not simply work on their proposals up until the point they needed to upload their proposal to the procurement website. Instead, they had to complete their work earlier so as to ensure the identical proposal could be copied on a USB drive and the USB drive could be dispatched with enough time to ensure timely delivery. In other words, the USB drive requirement effectively shortened the time available for proposal preparation for those offerors that complied with the requirement.

Accordingly, unlike all other offerors, Knowledge Services has not only been permitted to avoid a material Solicitation requirement, because they did not timely submit a USB drive, but it was also improperly given extra time by the agency. This plainly is prejudicial and disparate treatment, and material unfairness. This is made starkly apparent by a hypothetical. Had the agency issued a solicitation that stated “all offerors have to submit proposals on a USB drive by [date], except for Knowledge Services, which may simply upload its proposal electronically,” there can be no doubt that such a solicitation would be wholly improper. Such a Solicitation would plainly be prejudicial and would give Knowledge Services an unfair competitive advantage in the form of more time for proposal preparation effort. *See Siemens Hearing Instruments*, B-225548, 1986 WL 64560 (Comp. Gen. Dec. 30, 1986) (the “late proposal rule simply prevents one offeror from obtaining an unfair advantage over a competitor that might accrue because that offeror is permitted to submit a proposal later than the deadline established for all competitors”). By waiving the requirement, that is precisely what the agency has effectively done here. It is wrong and should be corrected. Knowledge Services should have been eliminated and its proposal never evaluated.

The agency’s answer that Knowledge Services’ failure to comply with this mandatory requirement is nothing but a minor informality is not only untimely, it is patently incorrect. The statute defines a “minor informality” narrowly as a nonconformity “which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids ... the correction or waiver of which *would not be prejudicial to bidders*.” SC S.C. Code § 11-35-1520(13) (emphasis added). The provided examples of minor informalities are distinctly different



than the Solicitation's USB requirement. The first example, "failure of a bidder to return the number of copies of signed bids required by the solicitation," does not provide the offending offeror a competitive advantage over the other offerors. Distinct from the statutory examples, Knowledge Services' failure to furnish an identical copy of its proposal on a USB drive is not a minor informality because this failure gave Knowledge Services an unfair advantage over the other three offerors who did comply with this requirement. What the agency proposes to waive is plainly a material requirement because every offeror except for Knowledge Services had to ensure timely submission of a USB drive, which operated to actually reduce their proposal preparation time. Waiving that Solicitation requirement for Knowledge Services, a requirement that was notable and different from the 2022 Solicitation, is clearly erroneous, arbitrary, capricious, and contrary to law.

B. The Procurement Officer's Waiver of Knowledge Services' Noncompliance with the USB Requirement *Post Hac* Is Improper

The agency's belated determination that Knowledge Services' failure to timely provide a USB drive was a minor informality that could be waived was arbitrary and capricious because it prejudiced other offerors by allowing Knowledge Services additional time to complete its proposal. Moreover, the agency only made its determination that Knowledge Services' failure to submit a USB in compliance with the Solicitation was a "minor informality" after it (1) issued the Intent to Award Notice and (2) Covendis brought this material noncompliance to the agency's attention. Attachment 4; Attachment 18. This *post hac* waiver is improper and patently unfair. Moreover, it is indicative of other agency actions in evaluating the proposals that failed to conform to the Solicitation, harming Covendis.

C. The Evaluation Panel Failed to Follow the Evaluation Process Established in the Solicitation and Panel Instructions

The Procurement Officer and Panel failed to follow the prescribed process for conducting evaluations of the proposals, which was established to ensure the process is fair. First, the Panel did not follow the instructions to the Panel and charging instructions. Second, the Panel did not consider the offerors' demonstrations in line with the Solicitation's requirements when scoring the proposals. The award decision was predicated on improper processes and procedures, making it fundamentally unfair.

The Procurement Officer provided detailed instructions to the Panel on April 10, 2023 that was not followed, resulting in an unfair and biased process. *See* Attachment 10. The Procurement Officer and Panel failed to abide by the prescribed process in the following ways:

- The Procurement Officer failed to provide the points for the price proposal to the Panel. The Panel Instructions provide that the Procurement Officer may decide whether "the points for price will ... be figured by the chairperson of their designee based on a formula supplied by the SPO, or subjectively by each evaluator." Attachment 10, ¶ 6. Under this Solicitation, the Procurement Officer decided that he would "provide the points for the price proposal to the panel," as communicated



June 30, 2023
Page 11

in the Initial Evaluation Panel Meeting email. Attachment 17. However, each evaluator's score sheets contained *different* scores for the same offerors, which means the Procurement Officer failed to provide the points. *See* Attachment 19 (9 out of 10 points awarded to Covendis for price); Attachment 20 (8 out of 10 points); Attachment 21 (7 out of 10 points).

- The scoring meeting should have occurred after the offerors' demonstrations. Based on the Solicitation, the Panel members were supposed to be able to ask questions of the offerors. Additionally, the score sheets contain a "Pass/Fail" section for establishing whether the offeror's demonstration passed. Therefore, in order for the evaluators to fill out the score sheets, the scoring meeting would have to occur after the last offeror demonstration. However, according to the provided documentation, the scoring meeting occurred on May 11, 2023, and the last offeror demonstration was on May 30, 2023. Attachment 22 (scoring "meeting minutes" dated May 11, 2023); Attachment 23 (Computer Aid Inc.'s demonstration meeting minutes dated May 30, 2023).
- The Panel members should have been allowed to adjust their scores based on the offerors' demonstrations. The Panel's instructions state that evaluators may "want to adjust your scores when the Panel meets for discussion" and that they were permitted to "adjust preliminary scores at any time prior to finalizing them in ink and turning them in." Attachment 10. However, the Procurement Officer told Covendis during its debrief meeting on June 19, 2023, and again in a follow-up email, that Panel members were not allowed to change their scores as a result of the demonstrations for fairness. Attachment 5 ("The information from the demonstration cannot determine the scoring of other evaluation criteria"). The Panel Instructions were clear that Panel members were to meet for discussion "prior to finalizing scores and making an award." Attachment 10, ¶ 4. As the demonstrations were supposed to be scored on the final score sheet, it is a logical conclusion that members could use any clarifications received during the demonstrations to adjust preliminary scores before putting them into ink and signing the score sheets. Attachment 24 (evaluator score sheet). There is no doubt that the Panel did not follow these instructions to have a final discussion where they would finalize and sign their scores because all of the score sheets were signed on different dates. Additionally, in at least the case of Mr. Hogue, he could not have taken into account the offerors' demonstrations when finalizing his scores since his score sheets were signed on May 11, 2023, prior to any demonstrations.
- The Panel members did not complete and sign the score sheets together on May 11, 2023. The Panel members were supposed to meet together to discuss the pros and cons of each offeror, individually score the proposals, and sign their score sheets. Attachment 17. Holly Gillam signed her score sheet on May 30, 2023, Katherine Dobrenen signed on May 26, 2023, and Nathan Hogue signed on May 11, 2023.



The failure to follow even the simplest of procedures calls the whole process into question.

In addition to not following the Panel Instructions and charging instructions, the Procurement Officer and Panel failed to follow the Solicitation. Specifically, the Solicitation stated that offerors were to give demonstrations of their VMS, “discuss their proposal as submitted, and answer evaluation panel questions about their proposal and demonstration.” Attachment 15, 23. It also stated that “[t]he live demonstration should be designed to satisfy the evaluation panel’s need for clarification and understanding of the information that was provided in the Offeror’s written proposal.” Attachment 15, 23. However, during the debrief between Covendis and the agency, the Procurement Officer stated that the demonstrations “cannot determine the scoring of other evaluation criteria” because it is “a separate evaluation criteria.” Attachment 5. This contradicts the purpose underlying the demonstrations, as set forth in the Solicitation, that the evaluators could use this time to get “clarification” on the written proposals. Attachment 15, 23. Covendis was directly harmed by this deviation because the Panel’s score cards show misunderstandings of Covendis’ proposal that could and should have been “clarified” during the demonstration. For example, Ms. Gillam stated she had “concern if [Covendis is] adequately staffed to support the needs of SC and their system.” Attachment 21. Ms. Dobrenen also expressed confusion in her score card notes related to the rate information provided in Covendis’ technical proposal. Attachment 20 (“This example pg 36 (and listed gain [sic] on page 86) of rate information is quite confusing.”) Ms. Gillam and Ms. Dobrenen should have asked Covendis for further clarification regarding their staffing plans and rate information, but they did not. Even if they had asked these questions, the Procurement Officer stated that they would not have been allowed to adjust their scores of the written proposals, contrary to what the Solicitation provided. *See* Attachment 5.

Additionally, similar to the 2022 Solicitation, the Procurement Officer and Panel imposed unstated evaluation criteria contrary to S.C. Code § 11-35-1520(6) (“Criteria must not be used in bid evaluation that are not in the invitation for bids.”). The improper imposition of unstated evaluation criteria directly and adversely impacted Covendis. Specifically, as also discussed in the next section, Ms. Gillam’s score card notes indicate that she evaluated Covendis’ technical proposal on the basis of its past performance in the East Coast versus the West Coast states. Attachment 21. This criteria was not provided in the Solicitation and should not have been used in assessing Covendis’ technical proposal.

Based on the above examples of process deviations without support or explanation, the award was unfairly made to Knowledge Services. Covendis respectfully requests that the agency withdraw the award and reevaluate the proposals.

D. Using the Same Evaluation Panel as the 2022 Solicitation Introduced Inherent and Improper Bias That Could Not be Cured

The agency’s award was tainted by inherent bias because the Panel was made up of the same members as the 2022 Panel and the Panel members failed to evaluate each of the offerors



June 30, 2023
Page 13

fairly and equally. “The critical test for determining bias in an agency’s evaluation of proposals is whether all offerors were treated fairly and equally.” *Alan-Craig, Inc.*, B-202432, 1981 WL 23317, at 3 (Comp. Gen. Sep. 29, 1981). Bias is defined as “[a] mental inclination or tendency; prejudice; predilection.” *Bias*, Black’s Law Dictionary (11th ed. 2019). The type of bias at issue here is confirmation bias, which is “the fact that people are more likely to accept or notice information if it appears to support what they already believe or expect.” *Confirmation Bias*, dictionary.cambridge.org.

In connection with the 2022 Solicitation, the same panel had determined that Knowledge Services was essentially infallible, giving them a perfect 100 score. Attachment 25. The Protest Decision confirmed that this prior award was improper because the Panel had considered and imposed unstated evaluation criteria. Attachment 9. The only way for the Procurement Officer to eliminate the potential for confirmation bias (namely, the tendency of the Panel to interpret the new proposals as confirmation that Knowledge Services was the best) was to constitute a new panel. This was not done.

The Procurement Officer’s explanation that he had to use the same Panel members because they represent the agencies that use the MSP the most makes no sense. There is no suggestion that the agency lacks other similarly qualified and capable representatives. There is no explanation as to why the Procurement Officer did not simply designate different representatives from those same agencies. The confirmation bias risk here was clear and could have been readily avoided by designating a new panel. Because a new panel was not appointed, predictably Knowledge Services was once again selected – not because they are better, but because the Panel had already decided they were better the first time around. This is evident through the score cards.

- Ms. Gillam’s scores and notes show bias:
 - Ms. Gillam noted in her evaluation sheet that she was concerned that Covendis’ technical proposal, while it did provide state examples of similar size, included states that “appear to be located more in the Midwest/west coast region in the US.” Attachment 21. First, the Solicitation did not establish any criteria or factor that required consideration of whether an offeror’s past performance was in the East Coast versus the West Coast states. *See In Re: Protest by Sperry-Rand Corporation and Tandy Corporation*, 1985 WL 667178, *9 (“A consideration of factors outside those listed in the Request for Proposal is inequitable, improper and violates Section 11-35-1530(7)”). Even though the Solicitation did not require consideration of the region that an offeror had previous performance in, Covendis provided three East Coast states as examples where it provided similar services that the Solicitation calls for, including Tennessee, Georgia, and Connecticut, in addition to other non-East Coast states. Attachment 26, 163-66. Knowledge Services, the successful offeror, also included Midwest and West Coast states in its proposal, but Ms. Gillam does not identify this



June 30, 2023
Page 14

information in her evaluation of Knowledge Services. Attachment 27, 162-64; Attachment 28.

- Ms. Gillam also included in her notes that she had “concern if [Covendis is] adequately staffed to support the needs of SC and their system,” immediately followed up by “the offeror did indicate they would hire additional staff to support SC if selected.” Attachment 21. Ms. Gillam immediately answered her own concerns, making her score of Covendis’ qualifications criteria of 29⁵ out of 40 points without any basis arbitrary and capricious. There is also no support for why Knowledge Services received 38 out of 40 points for the same section. *See* Attachment 28.
- Ms. Dobrenen’s score sheet notes show bias towards Knowledge Services:
 - Ms. Dobrenen gave Knowledge Services a perfect score under the Qualifications criteria, while docking Covendis two points. Attachment 29 (Knowledge Services score card); Attachment 20 (Covendis score card). Ms. Dobrenen’s notes state concern with Covendis’ staffing ability: “I’m still concerned about their ability to staff up the office locally. Hiring people and getting them trained while getting us trained all within 60 days seems like a big lift.” Attachment 20. However, Covendis and Knowledge Services’ technical proposals contain similar plans to hire new local staff within the first 60 days. Covendis’ proposal said they would establish a local office with “five (5) to six (6) full-time staff on site.” Attachment 26, 167. Knowledge Services also proposed to hire at least 4 new local staff, but Ms. Dobrenen did not mention this as a concern, but instead said “They seem to include a much larger team for implementation and thus, I have confidence in their ability to complete this task successfully.” Attachment 30, 7 (providing a figure of the “Dedicated Team”). This confidence in Knowledge Services and concern for Covendis shows bias because both Knowledge Services and Covendis identified the same number of key staff that will support the implementation and program management. Attachment 26, 169-84; Attachment 27, 165.
- Additionally, the one criterion that should have been the most objective, price, appears to have no basis for the difference in score, showing that the Panel used the process to skew the results in Knowledge Services’ favor. Covendis provided the

⁵ There are two sub-criteria under the qualifications criteria. On Covendis’ scoresheet, Ms. Gillam allocated 15 out of 20 points to the first sub-criteria and 14 out of 20 for the second sub-criteria, however she allocated 41 out of 40 total points to Covendis. This appears to be in error, but it is another example of how the process was not carried out as intended. In the initial evaluation panel meeting instructions, the Procurement Officer specifically stated that “Once the process above has been completed for each proposal, the panel will confirm that their scores are correct and does not require any alteration.” Attachment 17. If this had been done, Ms. Gillam’s score would have been corrected.



June 30, 2023
Page 15

lowest rates 93.48%⁶ of the time and transaction fee of 1.55%, but received a 7, 8, and 9 out of 10 points from the three Panel members. Attachment 31⁷ (analysis comparing top 3 offerors' proposed rates). However, Knowledge Services had the second highest transaction fee⁸ and proposed rates 9.68% higher per hour on average than Covendis⁹ and received scores of 10, 10, and 9 out of 10. The Panel members' notes do not explain why Covendis received lower scores for the price criterion when it provided the best price. This lack of support for why Knowledge Services received a higher price score when Covendis' rates and transaction fee were objectively better is only explained by confirmation bias.

The Panel either had a preexisting belief that Knowledge Services is better or a desire to award the contract to Knowledge Services for some unarticulated reason. Either way, the bias directly affected their scoring of both Knowledge Services and Covendis, tainting this re-evaluation and award. The agency's decision is flawed because the reconstituted evaluation panel from the 2022 Solicitation based their re-award to Knowledge Services on unsupported findings, criteria not contained in the Solicitation, and inherent bias. The award based on inherent bias can only be cured by cancelling the award and undertaking a new evaluation with a new evaluation panel.

Conclusion

For all of the foregoing reasons, Covendis respectfully requests that Intent to Award be canceled and that the agency be directed to conduct its evaluation in accordance with the Solicitation and issue a new award decision.

Respectfully,

A handwritten signature in blue ink, appearing to read 'R. Tsao'.

Raymond Tsao
President & CEO

⁶ Covendis' calculated this by taking a sample of 184 comparable titles provided in the top 3 offeror's proposals, including Knowledge Services, Computer Aid, Inc., and Covendis. *See* Attachment 31. Based on that sampling, Covendis had the lowest average rate 93.48% of the time. *Id.*

⁷ Covendis created this analysis appearing in Attachment 31 using the rates from the offeror's proposals the agency provided to Covendis in response to its FOIA request.

⁸ Computer Aid, Inc. proposed the highest transaction fee of 1.85%.

⁹ Computer Aid Inc. proposed rates 5.24% higher per hour on average than Covendis.



June 30, 2023
Page 16

Attachments:

1. Intent to Award
2. Covendis Intent to Protest
3. SC FOIA Request 5400024620
4. Covendis - Memo for record for Minor Informality
5. FOIA Response - Solicitation 5400024620 (Notes)
6. Notice of Intent to Award 2022 Solicitation
7. Covendis Protest of Notice of Award Under Solicitation No. 5400022555
8. Supplemental Protest of Notice of Award Under Solicitation No. 5400022555
9. Original Protest Decision 2023-202
10. STC-Managed Services Provider Panel Instructions
11. Meeting Minutes - Charging
12. 2022 Meeting of the Request for Proposal Evaluation Committee – Covendis
13. Solicitation 5400024620
14. Solicitation Amend 1
15. Solicitation 5400024620 Amendment 2
16. 2022 Solicitation and Amendments
17. Initial Evaluation Panel Meeting - Solicitation 5400024620
18. FOIA Response - Solicitation 5400024620 (USB)
19. Nathan Hogue Score Sheet - Covendis
20. Katherine Dobrenen Score Sheet - Covendis
21. Holly Gillam Score Sheet - Covendis
22. Meeting Minutes – Scoring
23. Meeting Minutes Demonstration (Computer Aid Inc)
24. Evaluator Score Sheets
25. Consensus Rating of Panel
26. Covendis Technical Proposal
27. KS Technical Part 2
28. Holly Gillam Score Sheet – Knowledge Services
29. Katherine Dobrenen Score Sheet - Knowledge Services
30. KS Technical Part 1
31. Comparison Report

CC: Stephen Taylor

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2023)

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 2023 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
1105 Pendleton Street, Suite 209, 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.