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Protest Decision

Matter of: Thales DIS USA, Inc.
Case No.: 2024-204
Posting Date: February 23, 2024
Contracting Entity: South Carolina Department of Motor Vehicles
Solicitation No.: 5400023932
Description: Real ID Central Issuance

DIGEST

Protest denied. The protest by Thales DIS USA, Inc. (Thales) is included by reference.

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	01/24/2023
Amendment 1 Issued	02/08/2023
Amendment 2 Issued	03/13/2023
Amendment 3 Issued	04/14/2023
Amendment 4 Issued	04/25/2023
Amendment 5 Issued	05/03/2023
Amendment 6 Issued	05/08/2023
Amendment 7 Issued	05/12/2023
Intent to Award Posted	09/06/2023
Intent to Protest Received	09/18/2023

Protest Received

07/07/2023

On January 24, 2023, the State Fiscal Accountability Authority, Division of Procurement Services (DPS) issued this Request for Proposals (RFP) on behalf of the South Carolina Department of Motor Vehicles (DMV), to acquire the services of an experienced producer of Drivers Licenses / Identification Cards to replace ageing enrollment systems, transition DMV to central issuance card production, improve card security, and deploy an improved, centrally issued, card-based system that will utilize existing facial recognition system for integrity and identity verification. Between February 8, 2023, and May 12, 2023, DPS issued Amendments 1 through 7 to the RFP. DPS reproduced the complete solicitation with answers to vendor questions in Amendment 4, and any reference to the solicitation by the CPO is a reference to Amendment 4.

The solicitation incorporated a two-phase evaluation process with a separate set of evaluation criteria for each step. For Phase I, DMV evaluated and ranked all proposals using the first set of criteria:

Technical Proposal Soundness and Comprehensiveness	50
Corporate and Personnel Experience and Qualifications	25
Price	20
Assumptions & Risk	5

The solicitation provided that, after Phase I, DMV would invite the three highest ranked responsive and responsible offerors with a mathematical chance of being the highest ranked offeror to provide a demonstration of their proposed solution for evaluation as part of Phase II:

Demonstration	20
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The total points from Phase I and Phase II were to be added together to determine the highest ranked Offeror. If only one (1) Offeror was invited to demonstrate, the demonstration would be evaluated based upon a pass/fail assessment. Proposals were evaluated and ranked by the consensus of a six-member evaluation committee.

DMV received responses from Thales, CBN Secure Technologies Inc., (CBN)¹, IDEMIA Identity & Security USA LLC, (IDEMIA), and Veridos America, Inc. CBN was the highest ranked offeror after the Phase I evaluation and the only Offeror invited to demonstrate its offering:

5400023332 - ISSUANCE OF CREDENTIALS			Maximum	CBN	IDEMIA	THALES	VERIDOS
Consensus	Technical Proposal Soundness and Comprehensiveness	50.00		48.00	30.00	25.00	35.00
	Corporate and Personnel Experience and Qualifications	25.00		24.00	25.00	18.00	21.00
	Assumptions & Risk	5.00		4.00	1.00	4.00	4.00
	Price	20.00		20.00	15.90	17.63	15.25
Total Points before Demonstration				96.00	71.90	64.63	75.25
Demonstration			20.00	PASS			
Final Score			120.00	96.00	71.90	64.63	75.25

On September 11, 2023, DPS posted an Intent to Award a contract to CBN. Thales filed an Intent to Protest on September 8, 2023, followed by its formal protest on September 26, 2023. IDEMIA also protested. With its protest, IDEMIA submitted a Motion for Protective Order pursuant to S.C. Code Ann. Reg. 19-445.2200. Pursuant to this Protective Order, DPS released CBN’s unredacted technical and business proposals to counsel for Thales.²

¹ In addition to Thales, IDEMIA protested the intended award. In its protest, Thales uses CBN as an abbreviation for CBN Secure Technologies Inc., and the selection committee on its consensus score sheet does likewise. Therefore, in this decision, the CPO has adopted this abbreviation. The reader of the CPO’s decision on IDEMIA’s protest will note a different convention – the CPO uses CBNSTI as the abbreviation for CBN Secure Technologies Inc., and CBN as an abbreviation for CBN Secure Technologies Inc.’s parent, the same convention used in IDEMIA’s protest.

² Each party claims that their proposals contain significant amounts of confidential information. Likewise, some of the parties’ pleadings may contain confidential information. For this reason, the CPO has not appended any exhibits to this decision but when citing a document references the document by name.

DISCUSSION

Thales protests that DMV conducted both “its technical and price evaluations in an improper, unequal, arbitrary, capricious, and unreasonable manner,” and did not conduct proper discussions with Thales.

ALLEGED IMPROPER TECHNICAL VIOLATION

Thales argues the technical evaluation was “clearly erroneous, arbitrary, capricious, or contrary to law.” In this regard, Thales alleges:

Here, the disparity between the offerors’ evaluation scores, particularly when viewed in light of the evaluator’s comments, indicate the arbitrary and capricious nature of the technical evaluation. CBN’s proposed price afforded it only 2.37 points more than the point value assigned to Thales for its price proposal. *See* Exhibit 1 (Evaluation Score Summary). This was certainly not an insurmountable lead given the remaining available 100 points, including the Phase II Demonstration. However, the fact that SCDMV scored Thales’s proposal exceptionally low despite the high quality of its proposal, and scored CBN absurdly high on its technical evaluation, eliminated any mathematical chance of Thales receiving the award.⁶ It is apparent from review of the evaluation scores that the SCDMV went through extraordinary efforts to highly score CBN’s proposal above all the others, while at the same time arbitrarily lowering Thales’s technical score.

The Procurement Code does not specify how the State must accomplish this evaluation and ranking. This means that the State may tailor the mechanics of evaluation and ranking to fit the procurement as long as the State treats all participants fairly and the process is not unduly restrictive. Regardless of the mechanics employed or form used to express the results, those results are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law. S.C. Code Ann. §11-35-2410.

In this case, DMV used a six-member evaluation committee with consensus ranking. Evaluation by consensus helps modulate individual bias but it does not change the subjective nature of the RFP selection process, nor it does not relieve the evaluation committee of responsibility for delivering a reasoned and rational decision. The form and degree of specificity in expressing its reasoning is left to the discretion of the evaluators, as the Procurement Code only requires that the contract file contain a reasonable and rational basis upon which the award was made

sufficient to satisfy an external audit. S.C. Code § 11-35-1530(9). In the present case, the evaluation committee employed a “Consensus Score Sheet” that identified each offeror, along with their strengths and weaknesses for each evaluation criterion, and a rating or score for each criterion.

Thales cites numerous examples of apparent inconsistencies between the evaluation committee’s comments and the points awarded:

The evaluation documents and comments from the evaluators reveal and demonstrate that the SCDMV was unreasonably frugal in assigning points to Thales’s technical proposal even though the Thales proposal had significant strengths that surpassed the other offerors. For example, the evaluators noted that Thales had “good security features” that were not identified as strengths in either Idemia or Veridos’s proposals. *See* Exhibit 3 (Signed Consensus Score Sheet). Moreover, the evaluators noted that Thales had “good and lengthy experience” with drivers licenses. Yet both Idemia and Veridos somehow received higher technical scores than Thales. **Confidential Trade Secrets**

Conversely, the evaluation documents indicate that Thales was more heavily penalized for the exact same weaknesses that were identified as weaknesses in the evaluations of other offerors. For example, although Idemia received 30 out of 50 points for its technical proposal, the SCDMV identified more weaknesses with Idemia’s proposal than it did with Thales’s proposal, which received only 25 out of 50 points. Similarly, the SCDMV was much more generous evaluating Veridos’ proposal (35/50 points) as compared to Thales’s proposal (25/50 points) despite that the evaluators identified similar weaknesses in both proposals (*e.g.* no ISO 14298 certification, no direct experience with the SCDMV).

Perhaps because it was enamored with CBN’s dramatically low price,³ the SCDMV seemed to go out of its way to issue an almost perfect score of 48/50 to CBN, ensuring its status as the awardee. **Confidential Trade Secrets**

See Exhibit 3 (Signed Consensus Score Sheet). The evaluators also noted that **Confidential Trade Secrets** *ee id.*

³ Contrary to Thales’s suggestion, the evaluation committee was unaware of CBN’s price proposal at the time it evaluated and scored technical proposals. The Procurement Officer provided the price proposal scores only after the technical evaluation was completed.

The evaluators also gave CBN the highest technical score despite having to make certain assumptions under its proposal; namely, [REDACTED]

[REDACTED] *Id.* [REDACTED] should have rendered CBN's proposal much less desirable from a technical standpoint. In addition, the risk rating assigned to CBN's proposal should have been significantly higher given the lack of a clear commitment to provide a backup facility. Instead, CBN was rewarded with a near-perfect technical score.

In short, nothing about this technical evaluation justifies the assigned scores or meets the requirements for the procurement to be "fair and equitable." The gross deficiencies and inconsistencies in the technical evaluation necessarily resulted in a flawed best value decision. It is well established that a source selection decision based on inconsistent or inaccurate information concerning the technical evaluation or the relative merits and contents of the offerors' technical proposals is not reasonable. *See e.g. Ashland Sales & Serv. Co.*, B-291206, Dec. 5, 2002, 2003 CPD ¶ 36 (sustaining a protest in part because the agency's source selection decision was based "on erroneous information about the evaluated difference between [two offerors] under the experience/past performance factor").

The evaluation and ranking of proposals received in response to an RFP is governed by S.C. Code Ann. §11-35-1530(7), which states:

Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Once evaluation is complete, all responsive offerors must be ranked from most advantageous to least advantageous to the State, considering only the evaluation factors stated in the request for proposals.

The award of a contract resulting from an RFP is governed by S.C. Code Ann. §11-35-1530(9), which states:

Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration the evaluation factors set forth in the request for proposals, unless the procurement officer determines to utilize one of the options provided in Section 11-35-1530(8). The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP. The contract file must contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section 11-35-1520(10).

The South Carolina Procurement Review Panel established standards for review of claims of an improper RFP evaluation. First the Panel has found that the variation between evaluators scores

alone, is only proof of the subjective nature of the evaluation aspect of the RFP process. See *In re: Protest of Drew Industrial Division*, Case No. 1993-14. Second, the Panel noted that arguments that an Offeror's proposal is superior to the others is fruitless and without merit since the determination of what is most advantageous to the State can only be determined by the State. See *Appeal by TRAVELSIGNS*, Panel Case 1995-8

The Panel has stated numerous times that so long as the evaluators follow the requirements of the Procurement Code and the RFP, fairly consider all proposals, and are not actually biased, it will not re-evaluate proposals and will not substitute its judgment for the judgment of the evaluators. The Panel has stated that the burden of proof is on the appellants to demonstrate by a preponderance of the evidence that the determination made by the evaluators is clearly erroneous, arbitrary, capricious, or contrary to law. See *Appeal by Transportation Management Services, Inc.*, Panel Case 2000-3.

Finally, the Panel has stated that, for a finding that an evaluation was arbitrary or capricious, the evidence must demonstrate that the determination lacked a reasonable or rational basis:

The burden of proof is on the appellants to demonstrate by a preponderance of the evidence that the determination made by the procurement officer is clearly erroneous, arbitrary, capricious or contrary to law. *"To prove arbitrary and capricious conduct such as will permit the court to overturn a procurement decision, the aggrieved bidder must demonstrate a lack of reasonable or rational basis for the agency decision or subjective bad faith on the part of the procuring officer or clear and prejudicial violation of relevant statutes and regulations which would be tantamount to a lack of reasonable or rational basis."* Robert E. Derecktor of Rhone Island, Inc. v. Goldschmidt, 516 F.Supp. 1085.

See *Appeal by Value Options, Magellan Behavioral Health & Blue Cross and Blue Shield*, Panel Case 2001-7

The first and most significant evaluation criterion published in the solicitation was "Technical Proposal Soundness and Comprehensiveness." The evaluation committee could award up to 50 points for this criterion. The committee awarded CBN 48 out of 50 points, Veridos 35 out of 50 points, IDEMIA 30 out of 50 points, and Thales 25 out of 50 points. The Consensus Score sheet reflects the committee's reasoning as follows:

Offeror	Strengths	Weaknesses
<p>CBN</p> <p>48 Points</p>	<p>Card Sample - Confidential Trade Secrets</p> <p>[REDACTED]</p> <p>embossing; microprint was crisp; photos were enhanced/cropped to meet AAMVA standards; Card met ISO requirements; Pass from test examiner;</p> <p>Good separation on bar codes on back of card</p> <p>Attractive card design for SC</p> <p>Confidential Trade Secrets</p> <p>[REDACTED]</p> <p>Provided Quality Catalog</p>	<p>Confidential Trade Secrets</p> <p>[REDACTED]</p>
<p>Thales</p> <p>25 Points</p>	<p>Card Review -Good sample of security features - Surface Embossing; Bar Codes; IR ink on the back of card; UV on front & back of card; met ISO Standards; Pass from the test examiner; Encrypted option for pdf/bar code but no details given</p> <p>Provided a quality catalog</p> <p>Longer acceptance period allowed during implementation while still meeting the SCDMV timeframe</p> <p>Good mitigation strategies included; penetration testing addressed</p> <p>Signature Pad is a plus</p> <p>Could include biometrics</p> <p>Work with SCDMV on encryption protocols</p> <p>Facilities are Minnesota and backup in Rhode Island</p>	<p>Card Review - Requirement 3.E.22 is poorly addressed - didn't provide and alternative method of applying the SPI but used the DOB as an additional element to the photo; Large white spaces included on the card without security printing; not a lot of overlapping elements; no improvement on the photos to meet AAMVA standard; Wavy lines going through the photo make it difficult to view the image; Blue backdrop on provided photos were not removed</p>
<p>Veridos</p> <p>35 Points</p>	<p>Card Samples - Tactile printing; Matched SC Coloring to type of credential; have overlapping signature on photo; Removed blue backdrop on photos; Good use of security printing on front & back; UV on front & back</p>	<p>Card Samples - background of photo has too much white; no surface embossing; minimal cropping/enhance photo did not match AAMVA standard; bar codes too close on back of card; no</p>

	<p>Provided lessons learned from other contracts Framework is similar to that used by SCDMV Implementation within SCDMV requirements Facilities in Ohio and Illinois - load balance between these facilities; back up facility in Indiana - unsure of how load balancing is determined</p>	<p>fine lines on the photo background; Lenticular area needs to be enlarged Require direct access to SCDMV System via pre-installed drivers/driver pack/autoinstalled driver updates/USB Sticks</p>
<p>IDEMIA 30 Points</p>	<p>Sample Card Review - Met the ISO standard; Pass from the test examiner Implementation timeline is in alignment with needs of SCDMV for transition; 11 month project plan; Most robust transition plan Three day turnaround on printing cards Cards made and personalized in Springfield, IL- backup in Sacramento, California - need clarity around the transfer process & notification Use Amazon Web Services</p>	<p>Sample Card Review - bar codes are too close together; no encrypted bar code/pdf; not a complex transparent window (orphan); limited surface relief on card; not a lot of overlapping data - doesn't overlap into photo; wavy lines through the picture interfere with photo and make it more difficult to view the photo; photo not in a AAMVA standard - wasn't adjusted from the photo provided; No updates/improvements to provided photos (background not removed, not cropped); Minimum UV on the front only - none on the back of the card; Limited security functions on the sample card; SCDMV would need additional security features added before issuance Sample card design was very basic Didn't propose a quality acceptance catalog Specified Rock Hill & Blythewood as pilot offices - but these are very similar - SCDMV would prefer using more diverse locations as the pilot locations</p>

The procurement officer's determination and findings provide no additional insight:

FINDINGS

Taking into consideration both price and the evaluation factors set forth in the Request for Proposal, the evaluation panel has determined that the proposal submitted by **CBN Secure Technologies Inc.** to be the most advantageous to the State. No other criteria except those listed in the Request for Proposals were used in this evaluation.

DETERMINATION

Based upon the above findings, it is determined that the competitive sealed proposal award be made to **CBN Secure Technologies Inc.** as a responsive Offeror whose proposal is the most advantageous to the State, price and other factors considered.

The comments on the consensus score sheet show that the evaluation committee was thoughtful and rational in its evaluation of the strength and weakness of each proposal. Moreover, the disparity in scores is nothing more than evidence of the subjective nature of the scoring process. Notwithstanding Thales's allegations to the contrary, a thorough review of the proposals and the consensus score sheet show that the evaluation committee decision was not "clearly erroneous, arbitrary, capricious, or contrary to law." Put another way, Thales has failed to meet its burden of proving that the evaluation committee's technical scoring lacked a rational basis. This issue of protest is denied.

Next Thales protests that the SCDMV did not conduct proper discussions with Thales:

Next, the procurement is tainted because the SCDMV did not abide by its obligation for fair and transparent competition and, more specifically, failed to follow the regulatory requirements regarding discussions with offerors. Pursuant to S.C. Code § 11-35-1530(6), "discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussions." *See also* S.C. Code Regs. § 19-445.2095(I)(3).

Thales argues:

To the extent the SCDMV was going to engage in discussions, it had to do so in a meaningful and thorough manner. In this regard, had the SCDMV raised certain concerns regarding Thales's technical proposal during discussions, Thales could have positively responded and resolved such issues, resulting in a higher technical score that would have given Thales a "mathematical chance" of being the highest ranked offeror under Phase I of the evaluation.

As noted above, when the SCDMV opened discussions with Thales, it asked Thales to confirm which level of accreditation Thales would obtain for its personalization facility. It also asked Thales to confirm its actual price for postage, as Thales's initial proposal stated that the postage would be

“[r]eimbursed at actual cost.” A third question from the Procurement Manager asked about the location of Thales’s manufacturing facility.

Once SCDMV opened discussions and sought clarification of proposals, those communications were required to be meaningful and comprehensive. Despite that, at no point did the Procurement Manager attempt to resolve other uncertainties or perceived weaknesses in Thales’s technical proposal. Specifically, the Procurement Manager did not identify that there were concerns about the “large white spaces without security printing” on Thales’s proposed card. Yet this was identified as a weakness in Thales’s technical proposal evaluation. Given that the SCDMV recognized Thales’s “good and lengthy” experience manufacturing driver’s licenses as a strength, the SCDMV should have identified the large white space as an oddity on the card. Given the opportunity, Thales would have clarified that the card itself will not contain the large white space; this area was deliberately left blank on the sample card to identify where the bar code is to be placed. This clarification also is consistent with Thales’s technical proposal. *See* Thales Technical Proposal, Part 2, Section 2.10 at page 14. It is especially egregious for SCDMV to cite the “white spaces” as a weakness, and it suggests that the evaluators failed to read the entirety of Thales’s proposal, which clearly explains the issue.

Regulation 19-445.2095(I) requires the procurement officer to:

- (b) advise in writing every offeror of all deficiencies in its proposal, if any, that will result in rejection as non-responsive;
- (c) Attempt in writing to resolve uncertainties concerning the cost or price, technical proposal, and other terms and conditions of the proposal, if any;
- (d) Resolve in writing suspected mistakes, if any, by calling them to the offeror's attention.
- (e) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal, but only to the extent such revisions are necessary to resolve any matter raised by the procurement officer during discussions under items (2)(b) through (2)(d) above.

The Regulation allows for limited proposal revisions, identifying issues of responsiveness, clarifications, and mistakes. The “large white spaces without security printing” on Thales’s proposed card was identified as a weakness in Thales’s proposed solution. However, this was not an issue of responsiveness or a mistake or uncertainty that required clarification. The Regulation does not require the procurement officer to identify “perceived weaknesses” or less than optimal presentation or expression in each proposal, as this would result in the State evaluating and ranking proposals that it co-authored. This issue of protest is denied.

Thales next protests that the SCDMV conducted an improper price evaluation:

Finally, the award to CBN cannot stand because it is based on an improper price evaluation. Although the South Carolina Procurement Code is silent about how prices must be compared in a competitive procurement, the regulations and case law make clear that whatever process is selected, it must have a rational basis. *See* S.C. Code §11-35-2410. A price evaluation has a rational basis when it “provides a common basis for price comparison, or a ‘apples to apples’ to comparison.” *See In Re: Appeal By Gps Insight, LLC*, SCPD 2021-1 (S.C.Procure.Rev.Panel), 2021 WL 3510184 (affirming the chief procurement officer’s conclusion that the State’s methodology for evaluating prices lacked a rational basis). A price evaluation fails to provide this common basis when it fails to take into account the fact that different vendors made different assumptions in their pricing. *See id.*; *see also In Re: Appeal By PSI Services LLC*, Case No. 2022-5, 2022 WL 16946505 (concluding that the price evaluation was “arbitrary” because the points awarded under the evaluation bore “little relation to the actual costs to the State” and failed to allow for “a meaningful comparison of price.”).

Here, several aspects of the price evaluation are called into question. First, the manner in which the price evaluation accounted for the cost of postage in the evaluation was improper and allowed offerors to artificially lower their overall price. Offerors had to include the cost of postage as part of their price proposal. However, the Solicitation clearly indicated that postage was to be reimbursed at the contractor’s actual cost. *See* Solicitation, Scope of Work, Section III, 2.B.5.G. If the amount was to be reimbursed at actual cost, the SCDMV should not have considered it as part of the offeror’s overall evaluated price. This allowed offerors to game the system and propose an unreasonably low price for postage, as it knew it would be reimbursed the actual amount during contract performance anyway.

Indeed, Confidential

should have prompted the SCDMV to adjust the price evaluation accordingly. Instead, the SCDMV seems to have deliberately ignored this, accepting CBN’s price and assigning the maximum number of points for its price proposal.

The evaluation criteria published in the solicitation clearly indicate that the evaluated price would include the cost-per-card offered for the base card including postage:

Price 20

The evaluation panel will use the information submitted in the Price Proposal to evaluate this criterion.

- All-inclusive Cost-per-Card price offered for BASE card
(Including postage for non-expedited card)

[Amendment 4, Page 41] [bold supplied]

Paragraph 2B5G of the solicitation states that postage will be charged to the State as a pass-through:

2.B.5.G. Postage expenses for all mailings will be charged to the SCDMV as a “pass-through” expense. The postage rate must always be the best possible rate available without affecting delivery. All non-routine mailings must be approved by SCDMV.

[Amendment 4, Page 19]

Thales argues that this paragraph precludes evaluation of the cost of postage in the price evaluation. It is still a cost to the state. Nothing in this language inherently precludes evaluating postage cost for the base card as a part of the price evaluation. Nor are the two provisions inherently contradictory.

Notwithstanding the forgoing, Paragraph 4.2.10.2.5 indicates that postage is to be included in the optional pricing:

~~Base proposal shall be based on regular USPS mail delivery. Expedited cards shall be included in the pricing section as an optional price on a cost-per-card basis.~~ Base proposal shall not be based on mail delivery. Regular USPS mail and expedited cards shall be included in the pricing section as additional optional prices on a cost-per-card basis.

[Amendment 4, Page 31]

When compared with the evaluation criteria, Paragraph 4.2.10.2.5 is ambiguous. It is not rational to have the offerors propose a price that is optional and not binding and then use that price in the evaluation. However, in the present case, this irrational act had a nominal effect on the overall scoring. The final ranking is unchanged when postage is eliminated from the evaluation of price:

Offeror	Base Price	Postage	Total	Points w Post	Points w/o Post
Confidential				20.00	20.00
Thales	\$1.59	+ \$0.52	= \$2.11	17.63	17.48

IDEMIA	\$1.80	+	\$0.54	=	\$2.34	15.90	15.44
Veridos	\$1.89	+	\$0.55	=	\$2.44	15.25	14.71

The Panel had indicated that if an error does not affect the outcome, it is a harmless error:

The Panel has applied the doctrine of harmless error in the past. See *In re: Protest of First Sun EAP Alliance, Inc.*, Panel Case No. 1994-11 (October 31, 1994) ("If an evaluator's score does not affect the outcome of the procurement, his conduct is harmless error and there is no need for review of the process.") (emphasis added).

Appeal by Excent Corporation; Protest by Public Consulting Group, Panel Case 2013-2

The inclusion of postage in the evaluation of price is a harmless error and this aspect of the protest is dismissed.

Thales argues that by including postage in the price analysis, DMV allowed offerors to game the system by proposing unreasonably low postage price to gain an advantage in price scoring.

While the possibility of unbalanced bidding existed, that does not appear to be the case here.

CBN's price ranking relative to the other bidders is actually slightly better without the inclusion of postage.

Thales next argues the price evaluation did not consider total cost to the state. In making this argument. It is important to note that the solicitation provided that the price evaluation would evaluate the price for the base card offering. Specifically, the solicitation states:

Price 20
The evaluation panel will use the information submitted in the Price Proposal to evaluate this criterion.
• All-inclusive Cost-per-Card price offered for BASE card

Thales does not challenge this approach to evaluating price. Instead, Thales argues that the price evaluation was flawed because CBN excluded "many important security features from its base card in order to be able to propose a much lower per-card price,

moving the cost of these required security features into the “optional” price, making it look cheaper than its competitors:”⁴

Next, the SCDMV improperly evaluated the proposed optional security features vis-à-vis the proposed prices. **Confidential**

This suggests that CBN excluded many important security features from its base card in order to be able to propose a much lower per-card price, moving the cost of these required security features into the “optional” price, making it look cheaper than its competitors. Not only does this negatively affect CBN’s price evaluation, but it also **raises doubts about the validity of CBN’s technical evaluation.** and awarded it 48 out of 50 total points.

and calls into question whether CBN actually met the minimum mandatory requirements of the Solicitation. It also highlights that the SCDMV awarded the contract based on an illusory price, as **the card price as awarded may not contain all required security elements.** Ultimately, the SCDMV paid \$1.635, \$0.045 above Thales’s compliant price. As such, there is simply no way CBN’s proposal could have been deemed to represent the best value given the illusory nature of and inherent risk in its price.

The CPO notes that Thales’s claim of a “whopping” is based on a typographical error in the “Price Point Calculation” spreadsheet prepared by the Procurement Officer. CBN’s Business Proposal list a

CBN’s proposal also lists

[CBN Business Proposal, pages 4-7]

[Id.]

⁴ Without saying so expressly, Thales essentially argues that CBN’s base card price is an unreasonably low price and there is no way that CBN can perform for this price. However, absent further allegations of misrepresentation or bad faith, this does not provide a basis for protests. *Appeal by Catamaran, LLC*, Panel Case No. 2015-2.

To support a claim of improper price evaluation, Thales speculates that due to the supposed [REDACTED], CBN's base card did not meet the solicitations minimum requirements. However, the consensus score comments and the record indicate that CBN offered a superior base card at the lowest price. CBN supplied a comprehensive proposal which is clear about the features included in its base card offering. There is nothing in the record to support Thales's contention that the selection committee improperly evaluated optional security features when evaluating CBN's base card and the price for its base card. The only evidence Thales presents to support its contention is a typographical error by the Procurement Officer. This issue of protest is denied.

Thales next speculates that in its price evaluation, DMV did not consider a possibility that future fortuitous events might affect the CBN's base card price. Specifically, Confidential [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The solicitation controls when and how price may be increased. First, price may be adjusted due to a change in the scope of services:

PRICE ADJUSTMENTS (JAN 2006)

(1) Method of Adjustment. Any adjustment in the contract price made pursuant to a clause in this contract shall be consistent with this Contract and shall be arrived at through whichever one of the following ways is the most valid approximation of the actual cost to the Contractor (including profit, if otherwise allowed):

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

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(b) by unit prices specified in the Contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the relevant clause, including profit if otherwise allowed, all as specified in the Contract; or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or,

(e) in the absence of agreement by the parties, through a unilateral initial written determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, including profit if otherwise allowed, all as

computed by the Procurement Officer in accordance with generally accepted accounting principles, subject to the provisions of Title 11, Chapter 35, Article 17 of the S.C. Code of Laws.

(2) Submission of Price or Cost Data. Upon request of the Procurement Officer, the contractor shall provide reasonably available factual information to substantiate that the price or cost offered, for any price adjustments is reasonable, consistent with the provisions of Section 11-35-1830. [07-7B160-1]

Thales's concern is not about a change in the scope of services but a change in CBN's internal operations affecting its cost to perform the agreed upon scope of services. The solicitation does not allow for such an increase. Instead, with one exception, it only allows for costs adjustments based on consumer price indexes at the initial five-year term of the contract:

PRICE ADJUSTMENT - LIMITED -- AFTER INITIAL TERM ONLY (MODIFIED)

Upon approval of the Procurement Officer, prices may be adjusted for any renewal term. Prices shall not be increased during the initial term. **Any request for a price increase must be received by the Procurement Officer at least ninety (90) days prior to the expiration of the applicable term and must be accompanied by sufficient documentation to justify the increase.** If approved, a price increase becomes effective starting with the term beginning after approval. A price increase must be executed as a change order. Contractor may terminate this contract at the end of the then current term if a price increase request is denied. Notice of termination pursuant to this paragraph must be received by the Procurement Officer no later than fifteen (15) days after the Procurement Officer sends contractor notice rejecting the requested price increase.

Upon approval of the Procurement Officer, **prices may be adjusted on an annual basis during the initial contract term or renewal contract terms for (1) postage for shipping (driver's licenses) only.** Contractor shall submit with their request supporting documentation to substantiate this request. Price increases or decreases become effective only when approved in writing by executing a change order. Prices shall not be increased during the first year of the contract. Any request for a price increase must be received by the Procurement Officer **at least ninety (90) days prior to the anniversary date of the contract.**

PRICE ADJUSTMENTS -- LIMITED BY CPI "OTHER GOODS and SERVICES" (JAN 2006)

Upon request and adequate justification, the Procurement Officer may grant a price increase up to, but not to exceed, the unadjusted percent change for the most recent 12 months for which data is available, that is not subject to revision, in the Consumer Price Index (CPI) for all urban consumers (CPI-U), "Other Goods and Services" for services, as determined by the Procurement Officer. The Bureau of

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Labor and Statistics publishes this information on the web at www.bls.gov [07-7B1751]
[emphasis in original]

The lone exception is increased cost of shipping. For these reasons, it would not have been proper to evaluate as a part of its price evaluation the effect of [REDACTED]

[REDACTED] This issue of protest is denied.

DECISION

For the reasons stated above, the protest of Thales is denied.



John St. C. White

Chief Procurement Officer

Columbia, South Carolina

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
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

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

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

Sworn to before me this
_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

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