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## Protest Decision

**Matter of:** IDEMIA Identity & Security USA LLC  
**Case No.:** 2024-206  
**Posting Date:** February 23, 2024  
**Contracting Entity:** South Carolina Department of Motor Vehicles  
**Solicitation No.:** 5400023932  
**Description:** Real ID Central Issuance

### DIGEST

Protest denied in part and granted in part. The protest by IDEMIA Identity & Security USA LLC (IDEMIA) 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	09/11/2023
Intent to Protest Received	09/20/2023

Protest Received

09/26/2023

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 reproduce 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 multi-step evaluation process with a separate set of evaluation criteria for each step. 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 IDEMIA Identity & Security USA LLC, (IDEMIA), CBN Secure Technologies Inc., (CBNSTI)<sup>1</sup>, Thales DIS USA, Inc. (Thales), and Veridos America, Inc.,

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<sup>1</sup> In addition to IDEMIA, Thales 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,

(Veridos). CBNSTI 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
<b>Total Points before Demonstration</b>				<b>96.00</b>	<b>71.90</b>	<b>64.63</b>	<b>75.25</b>
Demonstration			20.00	PASS			
<b>Final Score</b>			<b>120.00</b>	<b>96.00</b>	<b>71.90</b>	<b>64.63</b>	<b>75.25</b>

On September 11, 2023, DPS posted a notice of Intent to Award a contract to CBN Secure Technologies, Inc. (CBNSTI). IDEMIA filed an Intent to Protest on September 20, 2023, followed by its formal protest on September 26, 2023. 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 CBNSTI’s unredacted technical and business proposals to counsel for IDEMIA.<sup>2</sup>

## DISCUSSION

### IDEMIA ALLEGATIONS OF NONRESPONSIVENESS

IDEMIA first protests that CBN submitted a nonresponsive proposal. IDEMIA first alleges CBN’s proposal violates section 3.F.2.A of the solicitation which states:

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in the decision on Thales’ protest, the CPO has adopted Thales’ convention. IDEMIA on the other hand, uses CBNSTI as the abbreviation for CBN Secure Technologies Inc., and CBN as an abbreviation for CBN Secure Technologies Inc.’s parent, and this is the convention used by the CPO in this decision.

<sup>2</sup> 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.

3.F.2.A. All PII data utilized in the production of SCDMV credentials and the application of personalized data at the Contractor CIPS must occur within the continental United States.<sup>3</sup>

[Amendment 4, Page 25]

IDEMIA argues:

CBNSTI proposed to subcontract with its parent company, Canadian Banknote Company, Ltd. ("CBN"), a company incorporated under the laws of Province of Ontario, to perform the solicited contract. (*See Services Agreement, Ex. F.*) Under Section 11.2 of that Agreement, Subcontractor CBN "acknowledges that during the performance of the Services it may come in contact with Personal Information," ... Contrary to the State's instructions and the mandatory RFP terms, CBNSTI had not committed to have PII remain in the continental United States. Just the opposite, CBNSTI's agreement with its Canadian parent company, contemplates that PII will be shared outside the United States, rendering its technical approach non-responsive.

IDEMIA reads more into the draft agreement between CBNSTI and CBN than is warranted.

As required by the solicitation, CBNSTI included with its proposal a signed cover page and page two of the solicitation. The signed cover page includes this statement: "By signing, You agree to be bound by the terms of the Solicitation." [CBNSTI Technical Proposal, page iv] Therefore, the issue before the CPO is whether CBNSTI made any representation in its technical proposal which contradicts this statement regarding PII. The CPO finds that there is not. To the contrary, CBNSTI made statements affirming its intent to be bound by the requirement of section 3.F.2.A of the solicitation. CBNSTI included a compliance matrix with its technical proposal showing its compliance with the requirements of the solicitation. [CBNSTI Technical Proposal, Annex J] This matrix expressly cites section 3.F.2.A of the solicitation and states that CBNSTI is compliant. On page 292 of CBNSTI's technical proposal, CBNSTI addresses its subcontracting relationship with CBN. On that page, CBNSTI states "no CBNCO [CBN] employees will have

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<sup>3</sup> The Definitions section of the solicitation states "**PII** means Personally identifiable information (cardholder unique data)."

access to personal identifiable information outside of the United States when performing any of the above services.”

As required by the solicitation, CBNSTI also included a draft of its proposed agreement with CBN. Section 11.2 of that agreement states in its entirety:

**Personal Information.** SUBCONTRACTOR acknowledges that during the performance of the Services it may come in contact with Personal Information. Subcontractor acknowledges it has no ownership interest in any such Personal Information and agrees that it will not use such Personal Information for any purpose except for those purposes authorized by this Agreement.

IDEMIA relies on this statement to argue that CBN’s proposal violates the solicitations requirement that PII stay in the continental United States. However, nothing in this statement indicates that CBN will have access to Personal Information in Canada or will store such information in Canada. Nothing in this statement contradicts CBNSTI’s representation that no CBN employee will have access to PII outside of the United States.

IDEMIA next alleges that CBNSTI is nonresponsive for failing to properly identify CBN as a subcontractor. Specifically, IDEMIA alleges:

The RFP also requires offerors to identify the proposed subcontractors along with an organizational chart indicating staffing breakdown by job title and staff numbers on the project, and to detail the use of any subcontractor. (RFP Am. 4 at 35 (SOW Section 4.3.2.3.3); *id.* at 36 (SOW Section 4.3.3.6.3); *id.* at 39 (requiring Identification of Subcontractors).) ... Accordingly, IDEMIA also asserts, upon information and belief, that CBNSTI was non-responsive to this requirement of the RFP by failing to identify CBN as a subcontractor.

CBNSTI notes its intended sub-contractual relationship with CBN in a number of places in its technical proposal. On page one, Section 4.1.3, Executive Summary, CBNSTI first reveals its relationship with CBN. On page 10 of its proposal, CBNSTI includes a section titled “Sub-Contractors” where it identifies CBN as a subcontractor. On page 274, CBNSTI directly responds to the requirements of SOW Section 4.3.2.3.3 identifying CBN as a subcontractor and noting that it has included an organizational chart responsive to this section’s requirements in response to the requirements of SOW Section 4.3.3.6.3. On pages 277 through 280, CBNSTI provides an organizational chart and identifies key personnel and their duties.

IDEMIA finally alleges:

CBNSTI failed to follow SOW instructions requiring offerors to clearly distinguish the base card and optional card features and functions, which led to misleading evaluation results and resulted in the State not conducting a full and fair competition...

CBNSTI's failure to follow these instructions also render its proposal non-responsive.

In support of its contention, cites parts Sections 4.2.10.2.4 and 6 of the solicitation which state:

4.2.10.2.4 Your base proposal shall include all features that are included in your proposed card design without any optional security features.

4.2.10.2.6 Any security feature that the Offeror may wish to offer that is not included within the base proposal must be included in a table of optional features with an additional cost-per-card value per item or feature. This includes the optional color PPI feature.

IDEMIA also relies on the fact that in the Record of Negotiations, the parties agreed on the features of the "Premium Card feature bundle," which included "Ultraviolet (UV) Back – Visible – 3 Color" arguing that this language shows that UV on the back of the card was not an included feature for the base card. IDEMIA argues that because of CBNSTI's alleged failure to comply with these requirements:

CBNSTI received technical points for premium card features in the Technical score (e.g., Ultra Violet [sic] "UV" on the back) and received the full pricing points for offering a low base card price that did not include that feature.

Contrary to IDEMIA's allegations, a review of CBNSTI's proposal shows that it clearly distinguished its base card features from premium features. [CBNSTI Technical Proposal, pages 168 - 171] CBNSTI's proposal also shows that its base card included UV fluorescent properties on the back of the card. CBNSTI provided a sample binder of base cards as a part of its proposal. Page 8 of the binder shows limited UV fluorescent properties for the back of the base card.

Based on the forgoing, IDEMIA has failed to show upon a preponderance of the evidence that CBNSTI's proposal was not responsive to the requirements of the solicitation. This item of protest is denied.

IDEMIA ALLEGATIONS THAT TECHNICAL EVALUATION OF IDEMIA DEVIATED FROM STATED CRITERIA

IDEMIA alleges that DMV deviated from the proposal evaluation criteria stated in the solicitation “to IDEMIA’s significant prejudice.” In support of this allegation, IDEMIA sets forth several grounds where DMV allegedly deviated from the stated evaluation criteria.

FIRST

IDEMIA’s proposal included both sample cards and a narrative description of its proposed design and security features of its proposed base card. IDEMIA alleges the evaluator’s comments on the Consensus Score Sheet “focus solely on the Sample Card Review” and does “not consider the technical narrative about the card design and Card Features sheet.” In support of this contention, IDEMIA quotes a portion of the Consensus Score Sheet regarding the weaknesses of IDEMIA’s technical proposal as follows:

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

As a preliminary matter, the CPO notes that a review of the Consensus Score Sheet comments, both strength and weakness show that the evaluators consider narrative aspects of IDEMIA’s proposal. The challenge IDEMIA raises is whether they considered the narrative aspects when evaluating the card design. In support of its position that the evaluators did consider both, DMV argues the narrative portion of IDEMIA’s proposal for card design either support or do not contradict the comments quoted by IDEMIA. The CPO agrees with DMV. The narrative portion of IDEMIA’s proposal, pages 86 through 91, provides very little information that enables a comprehensive analysis of IDEMIA’s proposed security features independent of the card

samples and the narrative provided with those card samples. Indeed, the narrative portion of IDEMIA's technical proposal states:

For a more comprehensive list and description of our proposed features, refer to our Card Features Sheet, included with our proposal in our separate Card Samples Package.

[IDEMIA's Technical Proposal page 88]

A review of IDEMIA's Technical Proposal, including the Card Features Sheet in the Card Samples Proposal, shows IDEMIA relied heavily on images to convey its narrative story. These images in the narrative portions of IDEMIA's proposal support the selection committee comments. [CBNSTI Technical Proposal, page iv]. This item of protest is denied.

## SECOND

IDEMIA next complains:

IDEMIA USA was evaluated negatively for not including a "quality acceptance" catalog when the RFP required only the winning contractor to provide such a catalog as part of performance and in conjunction with the Agency.

In its evaluation of CBNSTI, the selection committee identified as a strength, CBNSTI's inclusion of a "Quality Catalogue" in its proposal.<sup>4</sup> The selection committee found IDEMIA's failure to include a "quality acceptance catalogue" with its proposal as a weakness.

The solicitation states:

Prior to any full card manufacturing production run and following an initial sample production run and review of test personalized cards, the Contractor shall work collaboratively with SCDMV to develop a mutually agreeable Acceptance Catalogue that proposes quality aspects of the card manufacturing process and the acceptable effects of the following tolerances to the personalization process and final card:

- 3.E.6.A. Identification of manufacturing defects
- 3.E.6.B. Inspection processes and statistical rates
- 3.E.6.C. Dimensions and tolerance acceptability
- 3.E.6.D. Acceptable Quality Limits
- 3.E.6.E. Corrective and remedial processes

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<sup>4</sup> The selection committee identified the inclusion of such a catalogue as a strength for Thales as well.



No where in the solicitation does DMV require vendors to provide a sample “Acceptance Catalogue that proposes quality aspects of the card manufacturing process” for purposes of evaluation. Section IV of the solicitation did require each offeror to describe its “Contract Management Plan,” including a description of its “Quality Assurance (QA) processes.” CBNSTI included in its proposal and extensive “Quality Assurance Plan” in Annex H to its technical proposal setting for a description of its quality control processes. IDEMIA included a discussion of its quality assurance protocols and methods in its proposal as well. [IDEMIA’s Contract Management Plan, pages 12–28]

The CPO was unable to find any document in CBNSTI’s proposal titled “Quality Catalogue,” “Acceptance Catalogue,” or “Qualify Acceptance Catalogue.” It appears, the selection committee was referring to Annex H to CBNSTI’s Technical Proposal when it states CBNSTI “Provided a Quality Catalogue.” In its response to IDEMIA’s protest, DMV asserts “while a sample quality assurance catalog was not required to be included with the proposals, the inclusion of the same did assist the SCDMV evaluators in understanding current quality assurance processes of the bidders, as well as how the bidders think about, assess, monitor, and address quality assurance issues.” While the CPO finds nothing wrong in CBNSTI responding to the requirements of the solicitation to provide a description of its “Quality Assurance (QA) processes” by providing Appendix H in the detail and format that it did. However, the question for the panel to consider in its evaluation was not whether the vendor provided a “Quality Catalogue,” “Acceptance Catalogue,” or “Qualify Acceptance Catalogue,” but whether and how well each vendor responded to the requirement to provide a description of its “Quality Assurance (QA) processes.” CBNSTI may have provided more meaningful detail in response to this requirement than IDEMIA and if so, the selection committee should have noted that IDEMIA’s description of its “Quality Assurance (QA) processes” was a weakness. However, the solicitation did not require IDEMIA to provide a “Quality Catalogue,” “Acceptance Catalogue,” or “Qualify

Acceptance Catalogue,” and to identify failure to do so as a weakness in IDEMIA’s proposal was improper.<sup>5</sup> This item of protest is granted.

### THIRD

IDEMIA complains that:

All offerors, other than CBNSTI, were evaluated negatively for not updating the sample photos provided by the Agency for use in the sample card, but the RFP specifically required offerors to use the images as provided.

IDEMIA is mistaken, while offerors were required to use the sample photos provided by DMV in their sample cards, nothing in the solicitation prevented offerors from adjusting those photographs to illustrate security features.

Page three of the solicitation includes the following statement:

Sample records are in a separate attachment in SCEIS (Appendix B). These records shall be used in preparation for the sample cards.

This statement also appears on page 13 of the solicitation under the section titled “CONFERENCE – PRE-BID/PROPOSAL,” amending earlier language. Likewise, the statement appears on page 16 under the section titled “SAMPLES (MODIFIED).” Finally, the solicitation answers questions 112 and 113 regarding the distribution of mock cards mentioned in the solicitation in its first version. In both answers, DMV responds:

Sample records are in Appendix B in SCEIS. These records shall be used in preparation for the sample cards.

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<sup>5</sup> It is not clear what the selection committee was referring to when it commented that one of CBNSTI’s strengths was it provided a “Quality Catalogue,” and when asked, the members were unable to shed any light on the matter. It is possible they were referring to CBNSTI’s Technical Proposal, Annex J Compliance Matrix, Section 3.E.6 (page 16 of the Annex). This document cites the requirement to work collaboratively with DMV to develop an “Acceptance Catalogue.” In this Matrix, CBNSTI states that it is compliant. This is nothing more than a statement that CBNSTI will comply with the requirements of the solicitation. However, there is nothing in IDEMIA’s proposal to indicate they took exception to this requirement of the solicitation and if they had, they would have been nonresponsive. Indeed, IDEMIA signed and submitted page 1 of the solicitation with its proposal to the State. Page 1 contains the following statement: “By signing, You agree to be bound by the terms of the Solicitation.” To the extent the selection committee’s comment that IDEMIA failed to provide a “quality acceptance catalogue” is a statement that penalizes IDEMIA for failing to expressly name this requirement in its affirmation that it would comply with the requirements of solicitation is not a basis for discounting its proposal.

For reasons irrelevant to this decision, DMV replaced Appendix B with Appendix C. This change is made apparent DMV's response to questions concerning question and answer 112 in the solicitation. Those questions and responses are:

**4. Question - Question 112** -- Can you please clarify if SCDMV will still be distributing a set of 20 mock cards to the vendors and when we can expect to receive them?

**Response:** Refer to revised language in Section II. II. INSTRUCTIONS TO OFFERORS -- B. SPECIAL INSTRUCTIONS, clause CONFERENCE - PRE-BID/PROPOSAL (MODIFIED). Sample records are in Appendix B in SCEIS. These records shall be used in preparation for the sample cards.

May vendors use facial portraits and signatures of their choice in the physical sample cards as the images files were not supplied in the sample records in appendix B.

**Response: No. Images and signatures to be used in samples are provided in Appendix C.**

**8. Question – ...**

**(Regarding answer to question #112)** During the Pre-Proposal Conference, on the discussion about sample cards and mock data, we understood SCDMV would provide digital photos/signatures along with demographic data, rather than just images of sample cards.

Will SCDMV please provide photo and signature images (i.e. JPG or TIF) as separate data elements and let the vendors know for which sample card these photos and signatures should be used?

**Response: Refer to Appendix C.**

**11. Question –** The SCDMV has prepared Appendix B in SCEIS of Sample records. The RFP instructs bidders that these records are to be used to produce two (2) card sample batches of each of the 20 records and accompanied by a sheet of personalization specifications.

The photos and signatures provided in the sample cards are inadequate in quality to scan and use for personalization of image and signature on polycarbonate laser engraved cards.

Can the DMV :

Supply the actual source image files for each of the photos (JPG) and signatures (TIF) for each record; or Confirm that bidder's can submit sample cards using their own images and data sets which are representative.

**Response: Refer to Appendix C.**

[emphasis in original]

CBNSTI used photographs and signatures provided in Appendix C in its sample cards as required. In the comments on the consensus score sheet, the selection committee stated under CBNSTI's strengths that "photos were enhanced/cropped [sic] to meet AAMVA standards."<sup>6</sup> Such enhancement was not only not prohibited by any of the questions and responses above, they were consistent with the purpose and requirements of the solicitation. The solicitation states that one of the requirements of the solicitation is to:

4.2.12.1. The Offeror shall submit a set of sample cards for the purposes of evaluation. The **sample cards shall be used** in addition to written proposal information, **to further assist evaluation in the areas of:**

4.2.12.1.1 Card adherence to ID-1 standard.

4.2.12.1.2 Offeror's knowledge, creativity, and experience in card manufacturing and security printing.

4.2.12.1.3 **Offeror's creativity and application of secure design elements.**

4.2.12.1.4 Offeror's knowledge, expertise and creativity in laser engraving personalization techniques.

4.2.12.1.5 Clarity and ease of readability of applied perso [sic] data.

4.2.12.1.6 **Offeror's expertise and knowledge of AAMVA CDS<sup>7</sup> requirements.**

4.2.12.1.7 Offeror ability to combine manufacturing security features and personalization methods to strengthen overall card.

[emphasis supplied]

The solicitation also says:

Offerors are free to apply the data from the sample records to the card as they see fit, however the application of personalized data shall adhere to the latest AAMVA CDS and meet the requirements of this RFP.

[Solicitation Section 4.2.12.5 "Note," page 32]

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<sup>6</sup> AAMVA is the American Association of Motor Vehicle Administrators.

<sup>7</sup> CDS means for Card Design Standard.

In short, nothing in the solicitation or amendments prohibited offerors from adjusting the provided photographs to meet AAMVA standards – to the contrary, the solicitation specifically allowed offerors to do so. This item of protest is denied.

#### FOURTH

IDEMIA next complains:

The evaluators criticized the placement of IDEMIA USA's bar codes, the surface relief, and UV "on the front only - none on the back of the card". (Consensus Score at 3, Ex. E.) But the RFP did not specify position of bar code, the surface relief, or require UV on the back of the card. Instead, the instructions expressly stated:

Note: Offerors are free to apply the data from the sample records to the card as they see fit, however the application of personalized data shall adhere to the latest AAMVA CDS and meet the requirements of this RFP. Offerors may choose font types, sizes and locations provided they are within applicable AAMVA CDS zones.

(RFP Am. 4 at 33, Ex. A.) IDEMIA USA's placement of the bar codes and location of the UV followed the AAMVA CDS standards.

IDEMIA's complaint is misplaced. Under IDEMIA's reasoning, each offeror would receive the exact same score provided their proposed design was "within applicable AAMVA CDS zones," regardless of whether some offered more or better security features within those zones than others. This ignores DMV's goals as stated in the solicitation. Examples are:

2.A.1. SCDMV aims to improve the security level of issued credentials similar to a large majority of US DL/ID issuers.

2.A.2. The intent of this project is to:

2.A.2.A. Improve the security, integrity, and quality of the driver license and other SCDMV issued identification cards.

Moreover, IDEMIA's complaint ignores the solicitations clear statement on how DMV would use the sample cards to evaluate proposals. The solicitation states:

4.2.12.1. The Offeror shall submit a set of sample cards for the purposes of evaluation. The sample cards shall be used in addition to written proposal information, to further assist evaluation in the areas of:

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4.2.12.1.7 Offeror ability to combine manufacturing security features and personalization methods to strengthen overall card.

The comments IDEMIA objects to is nothing more than a reflection of the selection committee's opinion that aspects of IDEMIA's proposed card design were weaknesses when compared to one or more competitors. This item of protest is denied.

IDEMIA'S ALLEGATION THAT THE STATE FAILED TO CONDUCT MEANINGFUL DISCUSSIONS

IDEMIA alleges:

The State entered into discussions but failed to raise each responsiveness, uncertainty, and suspected mistake the evaluators noted with IDEMIA USA's proposal to IDEMIA USA's competitive prejudice.

IDEMIA list seven items the selection committee identified as weakness in IDEMIS's proposal:

- The bar codes;
- The transparent window;
- The surface relief;
- The photo;
- The UV on the front but not the back;
- The lack of a quality acceptance catalog; and
- The changes to the Default clause and Limitation of liability clause.

IDEMIA further states:

many of these weaknesses derive from unstated criteria to the extent the evaluators found them non-responsive or a mistake, the Contracting Officer should have raised them in discussions.

This last statement gets to the crux of the matter. 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 list of items IDEMIA alleges the State should have discussed are not issues of responsiveness, suspected 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.

## **DECISION**

For the reasons stated above, the protest denied in part and affirmed in part. This solicitation is remanded to DPS/DMV to proceed in accordance with the Consolidated Procurement Code.



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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.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 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**

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\_\_\_\_\_  
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: \_\_\_\_\_

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For official use only: \_\_\_\_\_ Fee Waived      \_\_\_\_\_ Waiver Denied

\_\_\_\_\_  
Chairman or Vice Chairman, SC Procurement Review Panel

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
Columbia, South Carolina

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