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March 5, 2007

Via Hand Delivery

Mr. Michael Spicer
Chief Procurement Officer for Information Technology
Office of Materials Management
4430 Broad River Road
Columbia, S.C. 29210

Re: Protest of Proposed Award of Solicitation 07-S7279 to Saber Software, Inc.

Dear Mr. Spicer:

On behalf of Protech Solutions, Inc. ("Protech") and Affiliated Computer Services, Inc. ("ACS") we hereby protest the intent to award the Contract for the South Carolina Child Support Enforcement System and Family Court Case Management System to Saber Software, Inc. ("Saber") and request a hearing and/or administrative review. Protech is a major subcontractor to ACS who was an Offeror in the above referenced procurement. Pursuant to S.C. Code Ann. § 11-35-4210(1), Protech and ACS have standing to pursue a protest. The protest is based upon the following factual and legal basis:

On July 18, 2006, the Office of Information Management Technology ("ITMO") issued specifications for Solicitation 07-S7279. The solicitation sought proposals on behalf of the South Carolina Department of Social Services ("DSS") for the South Carolina Child Support Enforcement System ("CSES") and Family Court Case Management System ("FCCMS"). The scope of work for this solicitation would require the Prime Contractor to develop, implement, maintain and obtain federal certification of a South Carolina CSES and to develop, implement and maintain an FCCMS. The proposed contract provides that the fundamental obligation of the Contractor to deliver a federally certified CSEC and fully implemented FCCMS. The contract is intended to provide the State with a comprehensive and fully integrated CSEC and FCCMS throughout the entire state.

The solicitation required prospective vendors to submit an initial technical proposal and a separate business proposal. The technical proposals were to be scored and evaluated pursuant to the published criteria in the RFP and judged for responsiveness. The business proposals were likewise to be scored according to published criteria in the RFP and judged for responsiveness. The RFP provided that the business proposals would be scored based on the total cost of ownership to the State in addition to the vendor's ability to meet or exceed the State's needs with respect to risk analysis, risk mitigation, and risk sharing. The RFP also provided that the State would evaluate Offerors based on their qualifications which included financial responsibility and financial strength.

Mr. Michael Spicer
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experience and references evidence of successful past performance as a prime contractor and resumes for key personnel.

According to the RFP's evaluation criteria, the proposals were to be evaluated by an Evaluation Committee on the above criteria with scoring to be applied as follows:

Technical Proposal	50 points
Business Proposal	30 points
Offeror's Qualifications	20 points

From the technical and business standpoint, the state incorporated several requirements which would ensure that the certification and implementation of the CSES was completed in a timely fashion, as continued delays with regard to a federally certified CSES would result in continued loss of federal funding and the continued imposition and collection of penalties in the millions of dollars by the US Department of Health and Human Services. For this reason, the RFP required significant risk analysis and solutions regarding risk mitigation as part of the evaluation criteria. The State also wanted to ensure that once the design, implementation and certification was complete the CFS Project would successfully and seamlessly function. As such, the scope of work provided that the vendor would operate the CFS project for a period of two years after successful implementation. Furthermore, the vendor was required to perform all maintenance and warranty work for the Project for a period of two years after successful implementation. The cost of the operations and maintenance and warranty work was to be included in the total cost of ownership contained in the business proposal.

ACS emerged from the technical, business and qualifications evaluation with the highest scores for its proposal. As a result, the State began negotiations with ACS pursuant to S.C. Code Ann. 11-35-1530(8). The State and ACS conducted initial negotiations on December 12 and 13, 2006. During the negotiations, the State asked ACS to meet certain price concessions on its proposal. ACS indicated that it was not able to meet those concessions at that time; however, the State did not inform ACS and ACS did not perceive that negotiations had reached an impasse. Subsequent to the initial negotiation session, ACS reduced its price proposal in writing in an effort to continue the negotiations on January 10, 2007. However, unbeknownst to the ACS, the State had already unilaterally ended negotiations with ACS and commenced negotiations with Saber. ACS contends this procedure was unlawful, not in accordance with S.C. Code Ann. 11-35-1530(8) and premature. Upon information and belief, the concessions outlined in the ACS letter of January 10 were never considered. The statute plainly requires the State to negotiate with the highest ranking offeror in good faith until negotiations reach a clear impasse and the State failed to discharge this obligation.

The Procurement Officer's determination that the State should negotiate with Saber, the second highest ranking offeror, does clearly indicate negotiations with ACS were at impasse. As set forth in the Written Determination, four reasons were advanced: (1) ACS's allegedly refusal to reduce its cost; (2) the small gross difference in scores between the highest and second highest scoring proposals when viewed against the total number of points involved in the evaluation; (3) the close average technical scores which showed that either technical solution should meet the State's needs; and (4) the significantly lower price of the second highest scoring proposal. The code however requires that negotiations be exhausted with the highest ranked competitor

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before the commencement of negotiations with the next ranked competitor. The four reasons advanced to not meet the statutory criteria.

In addition to the premature negotiations with Saber, the fruit of those negotiations resulted in impermissible contract concessions which prejudice the State and full and open competition. The Procurement Officer proceeded with negotiations with Saber. At the conclusion of the negotiations, the Procurement Officer determined that viewing the negotiated proposal of Saber as a whole, along with its price, that Saber's solution (as negotiated) was now the most advantageous to the State and issued a Notification of Intent to Award to Saber. The Record of Negotiations, which were incorporated into the Procurement Officer's Written Determination reflect significant changes to the scope of the Contract and the liability imposed upon the Contractor through the RFP. Those changes to the terms and conditions imposed upon the contractor through the RFP include but are not limited to:

- (1) limited that liability of Saber for any consequential or incidental damages except for any federal funding penalties incurred by the State as a result of Saber's breach;
- (2) modified the liquidated damages provision;
- (3) reduced the warranty period for products provided to the State from two (2) years to one (1) year;
- (4) eliminated the payment hold back or "retainage" for hardware or commercial off the shelf software products or taxes;
- (5) eliminated the "no damage for delay" provision of the Contract;
- (6) eliminated the requirement that Saber be required to post a performance bond by an independent surety company licensed to do business in the State of South Carolina;
- (7) Reduced the warranty period for the CSES and FCCMS from two (2) years to one (1) year

The proposed award to Saber based upon these revised contract terms is improper and contrary to the Procurement Code for the following reasons: (1) the Procurement Officer did not comply with the requirements of S.C. Code Ann. 11-35-1530(8) in its negotiations with ACS and Saber and award to Saber; (2) the Procurement Officer did not comply with S.C. Code Ann. 11-35-30 in its negotiations with ACS and Saber and award to Saber; (3) the Procurement Officer did not comply with S.C. Code Ann. 11-35-20(f) in its negotiations with ACS and Saber and award to Saber; (4) the proposed award to Saber was in violation of Regulation 19.445.2070.

Mr. Michael Spicer

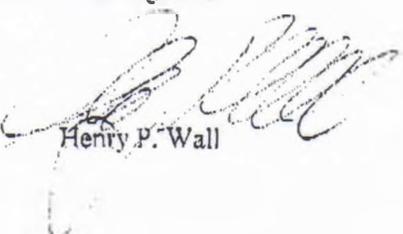
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Finally, the Saber proposal should have been rejected out of hand because: (1) Saber submitted a non-responsive technical and business proposal which materially deviated from the requirements of the RFP; (2) Saber materially misrepresented its ability to achieve the requirements of the RFP in that it is impossible for Saber to implement the Project in the manner and under the initial schedule identified in its proposal; (3) the evaluation panel's scoring of the technical and business proposal was arbitrary and capricious in that it did not properly consider the risk associated with the schedule of implementation proposed by Saber.

For the foregoing reasons, the notice of award to Saber should be cancelled and negotiations between ACS and the State should be reinstated or in the alternative the project should be re-bid based upon the deficiencies in the negotiated terms in the contract with Saber and the deficiencies and nonresponsiveness of Saber's initial proposal.

With regards.



Henry P. Wall

STATE OF SOUTH CAROLINA
State Budget and Control Board
DIVISION OF THE STATE CIO

MARK SANFORD, CHAIRMAN
GOVERNOR

THOMAS RAVENEL
STATE TREASURER

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CHAIRMAN, SENATE FINANCE COMMITTEE

DANIEL T. COOPER
CHAIRMAN, WAYS AND MEANS COMMITTEE

HENRY J. WHITE
EXECUTIVE DIRECTOR

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4430 BROAD RIVER ROAD
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March 6, 2007

Mr. Henry P. Wall, Esq.
Bruner, Powell, Robbins, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Columbia, South Carolina 29260-1110

Re: Protest of Proposed Award of Solicitation 07-S7279 to Saber Software, Inc.

Dear Mr. Wall:

In accordance with Section 11-35-4215 of the South Carolina Consolidated Procurement Code the using Governmental Units associated with this procurement, through the attached letter, request the Chief Procurement Officer require any bidder who files an action protesting the intended award or award of a contract post with the Chief Procurement Officer a bond or irrevocable letter of credit payable to the State of South Carolina in an amount equal to one percent of the total potential value of the contract.

The Chief Procurement Officer is granting this request. The total potential value of the intended award of this contract is \$89,230,687.00. A bond or irrevocable letter of credit payable to the State of South Carolina in the amount of \$892,307 must be posted with the Chief Procurement Officer prior to the commencement of the Chief Procurement Officer's administrative hearing.

Sincerely,

Handwritten signature of Michael B. Spicer in cursive.

Michael B. Spicer
Information Technology Management Officer

cc: H. Wade Mullins, Esquire
Liz Crum, Esquire
Marcus A. Manos, Esquire
Keith McCook, Esquire

NEXSEN|PRUET

Marcus A. Mann
Attorney
440 Broad River Road
Columbia, SC 29210

March 6, 2007

VIA ELECTRONIC MAIL, FACSIMILE, AND U.S. MAIL

Michael B. Spicer
Chief Procurement Officer
State Budget & Control Board
State of South Carolina
Division of State CIO
4430 Broad River Road
Columbia, South Carolina 29210

Re: **Solicitation Number 07-57279 CFB**

Dear Mr. Spicer:

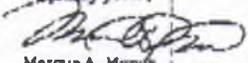
As you know, I represent the Using Governmental Units, the Department of Social Services, the Judicial Department, the Clerks of Court, and the Office of the Chief Information Officer in the above referenced procurement. Pursuant to Section 2.92 of the Solicitation Request for Proposals ("RFP"), my clients hereby request that the protesting parties, ACS and ProTech, post a one percent (1%) protest bond or irrevocable letter of credit in conformance with S.C. Code Ann. § 11-35-4213. The above referenced procurement involves a federally mandated and partially federally funded child support enforcement computer system for which federal funding penalties are being assessed. Delay and other costs of a protest could be significant to the State.

03/07/2007
08:42 AM
MAM

Thank you for consideration of this matter

With best regards, I am

Very truly yours,



Marcus A. Mann

MAM/hjc
cc: Mark Wall, Esquire
H. Wade Mullins, Esquire
Lisa Crum, Esquire

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