



Technology Solutions, Inc.

November 6, 2015

Mike Spicer, Chief Procurement Officer  
SFAA, Div. of Procurement Services, ITMO  
1201 Main Street, Suite 601  
Columbia, SC 29201

RE: Request for Review of CPO's Decision regarding Protest of Solicitation 5400008056, IT Temporary Services

Dear Mr. Spicer:

I am respectfully requesting a Procurement Panel review of your decision concerning my protest, pursuant to 11-35-4210(6). I do not believe you addressed my concerns fully, nor did you adhere to the letter and intent of many facets of the SC Procurement Code. Much of my protest was ignored because I addressed issues not specific to the amendment that provided the protest basis, however that amendment was issued after I had requested more information and your procurement officers had informed me they were not going to answer my questions in a proper amendment. I believe your division has not offered, in good faith, a means for me to resolve these issues without the filing of the protest, therefore, the issues that spawned the protest were contained in previous communications, but I had no choice but to protest when it was apparent that this solicitation was moving forward, simply ignoring my concerns and additional procedural questions. For this reason, I ask the Procurement Review Panel to review all items listed in my protest letter, attached here as Exhibit A.

The following is an explanation of why this entire protest and all sections require review:

You have known for years of the problems with bias under the Beeline/Tapfin contracts, and how that places vendors, particularly small businesses, participating in this process at a disadvantage. You and your procurement team have assured us on numerous occasions (most recently at the protest hearing and subsequent meetings resulting from a multi-vendor protest in late 2013) that this process would be improved so as to represent a fair and un-biased selection process such as the one that existed prior to the year 2000 here in our state. While there are many ways to twist and turn the procurement code to make it appear to allow just about anything, I'm sure you will agree that the taxpayers of our state rely on your division to protect their tax dollars by ensuring fair procurements that do not allow favoritism (and the accompanying cost abuse that generally comes with it) or other unfair gyrations that allow agency personnel to simply award all business to their friends.

However, that is what you have allowed this process to become. In spite of real evidence of anti-competitive practices, including an email from a procurement agent admitting he was aware of these practices, but had no way to stop them, (see Exhibit B) there has never been an adherence to Section 11-35-2420 regarding the reporting of anticompetitive practices, or any other proactive response to prevent it from continuing to occur. In fact, your response to this

Michael B. Spicer, CPO  
ITMO, State of SC  
Page 2 of 6  
November 9, 2015

procurement agent's admission that he was aware of these anticompetitive practices was firing him. And in your instant decision, you make the statement that "Agencies are free to purchase from the contractor they choose based on their own criteria which might include past experience with a contractor..." (emphasis added). (Exhibit C) It appears your division is encouraging anticompetitive practices.

You appear to be admitting that the intent of the procurement code to protect abuse of tax dollars, and to protect the vendors who choose to participate in procurements here in SC, is disregarded, since agencies can just make up their own criteria, which might just be, as it often is, their favoritism toward a certain vendor for whatever reasons. You have ignored what appears to many of we vendors to be obvious kick-back situations, or a "pay to play" system that has arisen surrounding this procurement process over the past 10+ years. I cannot explain why, but I still have a naïve belief in the validity of the procurement laws our legislature has written, and I believe her when our Governor speaks about making sure our procurements are fair and that all companies, large and small, should be able to compete on a level playing field. However, it appears that the goal of this process is to ignore all accountability, and to discriminate against small and local businesses, when it would be so simple to put accountability back in to protect us all and live up to the goals of the legislature.

Notwithstanding the challenges of small companies to even get placements (since we are generally not able to afford what it takes to "pay to play" if we were so inclined), there is a skewed idea of rating the participating vendors that does not match with logic or the way our industry is run. For years, all we've heard from agencies is that they want an efficient system – one that does not require them to wade through hundreds of unqualified resumes. Therefore, small companies like ours, who only send in resumes if we have an outstanding candidate, should be rated the highest when we are able to place 1 out of 3 to 5 submitted candidates. So what if we only submit 3 a year, if those 3 were actually selected and recruited specifically for a stated need by the State, and at least one of them was hired? Instead, this process favors the large companies with hundreds of recruiters who can: Submit resumes the fastest; and submit the most resumes (whether qualified or not) to the most openings. That encourages goals that are the absolute opposite of what our state and agencies need and have expressed that they want.

This process also does not take into account the varying business models between the different vendors – all of which should have a place in any state procurement for IT personnel. My company, for instance, focuses on long-term contracts for very experienced, senior-level personnel such as project managers, DBAs, etc. We are typically recruiting these individuals from other viable jobs, hiring them as full-time, salaried personnel, and paying for their medical and other benefits. We encourage loyalty and longevity and our clients appreciate that. We have built our reputation on these ideals. Other companies supply entry-level or just above personnel for short-term projects. Their talent pool may be unemployed personnel, or those who just work short-term temporary positions, but those people will typically be hired as contractors – not full-time, salaried personnel, and they won't incur the expense of their benefits, etc. It's a very different focus, but the companies who offer those services have also built their reputation based on their niche. The rating criteria proposed would force us all to adapt to a business model of

Michael B. Spicer, CPO  
ITMO, State of SC  
Page 3 of 6  
November 9, 2015

being equally adept at providing project managers and network technicians – for long-term or short-term assignments. There are occasions when we run across a network technician who might be interested in a 90-day assignment, but that is rare for us. Just as a company that specializes in network and cabling technicians *might* run across a great project manager or DBA occasionally, but that won't be the norm for them. But instead of embracing and leveraging the benefits of all companies with diverse business models, this process attempts to force us all into one box, requiring my firm to expend time to recruit for short-term network technicians, when we know our business model and our customers benefit more by our focusing on what we do well. The process forces mediocrity, rather than allowing us to showcase our true talents and assist the state in the areas we are most well-equipped.

The goal should be to arrive at a pool of vendors who don't waste anyone's time by flooding the system with resumes of people they know aren't likely to be a good match. Those of us who actually take our time and submit a few resumes here or there of higher quality consultants who actually get selected every once in awhile (unless favoritism is in play at a particular agency) are actually meeting the needs and wants of the agency personnel. Any good IT consultant selection system's goal is to provide a selection from each vendor's best, so that there are not so many resumes to wade through. Vendors who have those same goals actually screen for worthwhile candidates, and only submit the best of the best. The goals and ratings in this procurement encourage the opposite – a vendor is rewarded for submitting quickly as soon as the position is opened, even though resumes are not released to the agencies until the closing date of submission (please explain the logic in that?), and a vendor is rewarded for submitting to the most positions. That just creates more paperwork to go through, and encourages favoritism because it can be quickly identified which vendors are just submitting what they have on hand, rather than actually recruiting and screening for the skills listed in each posting.

This method of evaluating vendors (notwithstanding being unfair and discriminatory to small companies) only results in wasted time and money for the State, as there is no true "recruiting" process being used – only one to gather and flood the system with resumes to meet arbitrary and inappropriate goals to achieve vendor ratings. I submit the agencies could do just as well or better by subscribing to one of the online recruiting search engines. It's pot luck, and that's pretty much what this process has become. Were the procedure run with real accountability, real qualifications scores of resumes, comparison of rates bid with those qualifications, etc. (as is required in an RFP process), and feedback to the vendors, there would be no need for these vendor ratings. Those vendors who consistently submitted qualified candidates and who were not subject to bias and favoritism, would rise to the top and those not receiving awards would eventually stop attempting to participate. However, this current process encourages the opposite there too. We vendors who are actually providing a service by specifically recruiting for the best of the best, and will only risk our reputations by presenting the best, will eventually stop attempting to participate, because it's just not worth the time and resources to try to compete with large companies with numerous staff to flood the system with resumes.

I have read and re-read Section 11-35-1525 of the procurement code on Competitive Fixed Price Bidding, and can find no section that allows additional criteria to be used to award business other

than price. I can also find no law to support the rating and removal of vendors once they have adhered to the requirements to participate in a fixed price bid. I believe, in an effort to eschew all accountability, this section of the code has been selected and illegally modified when what should be taking place is to modify an RFP selection process, involving true criteria, resume scores, and final selection based on those scores, the rate bid for the candidate and the references received. Instead, it appears the goal of the procurement office is to take away all the accountability and just let agencies select based on anything they want to select on – including which vendor took them to lunch the most, or which one of them happens to be their hunting buddy on the weekends. That is not a fair procurement, and provides no protection to the taxpayers of SC.

There are numerous other areas that represent discrimination against small businesses. One such area is the requirement that vendors agree to a ninety (90) day hire option for the agencies. There has been no data provided for vendors to review stating how many times in the past a hire option has been used, but to require that we price all our consultants to recover our expenses and profit within 3 months, when those costs are generally calculated and spread over a full year on assignment, will result in small businesses having to price their consultants higher than large businesses, and we will not be able to compete on price. In the private sector, contracts of this nature provide a 1 year hire conversion option, with terms that include a “buy out” if a hire is desired prior to the full year on assignment. That allows all vendors to compete on a level playing field, and ensure that the competitive rate offered will cover their expenses and necessary profits to allow a hire to occur later in the contract term. Although this option has, to this vendor’s knowledge, not been exercised much to date, by making it part of the new contract could result in a rise in this hiring, and destroy many small businesses who have bid price in previous contracts, not being aware of this change coming up in the new contract.

There is also a new section in the solicitation that will encourage a more lackadaisical approach to the selection of vendors, since we would now be required to place a consultant under a service guarantee of five (5) business days. In other words, if the agency does not do a good job screening and interviewing and checking references for one of our submitted candidates, and they were selected, we would then have them give notice and leave their current job, onboard them with an agency in this process, and then wait an agonizing week while the agency decides if they’re going to keep him, after disrupting his life completely – and we vendors will not get to even bill for the five (5) days to cover any of our costs in employing and covering any other expenses (such as benefits, relocation, etc.) for this individual for the time he is employed by us for the benefit of the State. While it is not unreasonable to implement such a guarantee in the case where an individual has lied on his resume and representations of his qualifications to us, and managed to “fake it” in the interview (indicating a poor interview process by the agency), and simply cannot perform the work that is required of him, my fear is that this will give “carte blanche” permission to agencies to bring people in to “try them out” and remove all responsibility and accountability from them to make good selection decisions. There are much more reasonable guarantee terms that could be employed.

Michael B. Spicer, CPO  
ITMO, State of SC  
Page 5 of 6  
November 9, 2015

This solicitation is concerning also because there appears to be no goal to protect diversity in any manner. In fact, it is stated in bold print that even the guidelines in the procurement code for preferences for local and small businesses will not be used. There are discriminatory requirements surrounding unnecessary insurance amounts to be provided (some that we can demonstrate will not protect the State as they are interpreting), as well as other areas that would prove to be more costly for small businesses to comply.

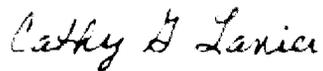
These are not new problems, but have been raised with each iteration of the contract vehicle this one attempts to replace in the past. Clearly there are serious issues. Vendors have been promised, over and over, that something would change as of the time of the new solicitation (including selection of a new online system that was actually designed for this purpose, rather than to be used for temporary staffing in the medical and administrative fields), but this is just more of the same, and what was decided and committed by ITMO to resolve the protest in 2013 has not been implemented. Once again, ITMO's commitments are not kept. If procurement would start looking at reasonable ways to put accountability back into the process, rather than pushing back against all attempts at it, the current process could be corrected and made much better. This is not only to the benefit of we vendors, but to the state agency users of this process and the taxpayers. It appears to me that the Procurement Division has a duty to make these improvements, but is continuing to fight all efforts toward those improvements. Surely we cannot be expected to endure another five (5) years with the same problems we've experienced over the last ten (10) years?

It would be very simple to resolve these issues: First, there are sections of the RFP procurement code that need to be utilized in the actual selection process. An RFP-like process would ensure that there are strict criteria to be used by vendors to select talent, and a scoring process so that we have an attainable goal in finding personnel who best meet the criteria. Then, there would be a formal scoring by agency personnel of the resumes and candidate information submitted, providing a measurable way to determine why one candidate was selected over another. (Currently, we submit resumes into a "black hole" where nothing is ever heard about them again. We are provided with no means of improving what we do for the state, because we get no feedback to learn how our candidates stacked up against others, even those selected.) There could be a requirement that references are checked for the candidates, thereby offering another checkpoint to ensure the right candidate is selected. These references would also be scored. A portion of the selection process, such as the rates bid, could be kept by the Vendor Manager, to be applied to the other 2 scores to arrive at an award. By employing such a method, this takes the complete decision making away from the agency, usually eliminating an easy way for an agency to show favoritism – or if they tried to do so by manipulating scores, it would likely be obvious. These are changes recommended by the vendor community over the past 10 years, but to date, ITMO has failed to implement them. During the last protest hearing and subsequent meetings, vendors were promised a fair and reliable scoring method for selection and vendor feedback, yet there is still none proposed in this new solicitation. The only reason for that appears to be to avoid accountability, when our overall state's goals seem to be to improve accountability. There is a disconnect that originates with the very division in our state government that should be supportive of the most accountability available.

Michael B. Spicer, CPO  
ITMO, State of SC  
Page 6 of 6  
November 9, 2015

It is my hope that the panel, who is made up of taxpayers and members of the private sector who are directly impacted by these decisions, will agree that there are simple changes that can be adopted to protect their interests, while providing the state an even better method of selecting IT consultants – in a fair and equitable method that does not discriminate against our own small and local businesses. The timely release today of our state’s integrity rating of a “D-,” with Procurement landing a solid score of a “D,” should be enough of an indorsement to consider the points raised in this letter to make some very overdue improvements.

Respectfully submitted,



Cathy G. Lanier  
President

cc: Geoffrey Chambers, Attorney at Law  
The Honorable Nikki Haley, Governor  
General Patrick Maley, Inspector General



October 1, 2015

Mike Spicer, Chief Procurement Officer  
SFAA, Div. of Procurement Services, ITMO  
1201 Main Street, Suite 601  
Columbia, SC 29201

RE: Protest of Solicitation 5400008056, IT Temporary Services

Dear Mr. Spicer:

I am respectfully advising you of Technology Solutions, Inc.'s Protest of Solicitation number 5400008056, IT Temporary Services, Amendment 1 and all underlying documents. According to my records, the Amendment was issued on September 17, 2015. Pursuant to S.C. Code of Laws, my calculations make the notification of protest due on or before October 2, 2015. Please consider this our notice of protest that will be perfected in an amendment provided to you on or before October 16, 2015. We have requested information from ITMO related to this protest, and have received a partial response. We need additional time to evaluate the information received so that we may perfect our FOIA to receive the additional information we need on that subject and potentially others that have been raised as a result of the Amendment to the Solicitation. If any of these dates have been miscalculated, please provide the correct dates by which we must provide our amended protest.

In general, the nature of our protest will include, but not be limited to, the following:

1. Whether any contract that might result from this solicitation is authorized by State Procurement Law. This solicitation and Amendment will result in a Fixed Price contract, for which the law is specific in how it should be administered and used. Section 11-35-1525 (7) indicates that award must be made to all responsive and responsible bidders. Item (8) of this same section states that any bidder that subsequently furnishes evidence of responsibility and responsiveness (using the same criteria as being awarded a place on the list of vendors in the first place) must be added to the award. There is no legal citation for subjecting awardees to any participation or other criteria AFTER award, and no legal basis for any vendor to ever be removed from participation, or for the contract award list to be limited in any manner.
2. Whether any contract that might result from this solicitation will violate state law in other ways, specifically, §11-35-45, in that vendors do not have control over what is printed on the invoices the agencies receive from the Vendor Manager (Tapfin Process Solutions) and are, therefore, being forced to waive the late fee penalty without providing consent to do so.

3. Whether any contract that might result from this solicitation, that uses criteria other than price to determine final candidate selection, violates §11-35-1525. Further, whether the contract violates §11-35-1520 (9), which pertains to pricing alone and contains determinations that take into consideration whether the firms are SC based, Certified as Small and Minority, etc. Whether the contract violates §11-35-1520 (10) which determines award of business based on price alone.
4. Whether any contract that might result from this solicitation will be anti-competitive, and clearly recognized as anti-competitive by officials of ITMO in charge of the contract. Recent statements by an ITMO Contract Manager appear to invoke §11-35-2420 and requires the reporting of anti-competitive practices. The evidence suggests, and everyone knows that “under the table” deals are happening. A former procurement employee has already admitted in an email some time ago, of his knowledge of the existence of anti-competitive practices. It logically follows that this one individual was not the only one privy to such activities. Yet, there has never been an investigation requested of the Attorney General as is required by law. This contract does nothing to alleviate the same issues surrounding anti-competitive practices that existed and were the subject of a multi-vendor protest a few years ago. At that time, the vendors were promised that ITMO would make significant changes and implement policies and procedures to eliminate these practices, yet the contract terms and conditions of the current solicitation do nothing to alleviate these.
5. Article 11, Section 11-35-3410 provides for modifications and terminations of contracts for supplies and services (including Information Technology). Nowhere in this section is there mention of vendors being terminated or suspended from an awarded contract list based on quotas or any other criteria such as those listed in the solicitation.
6. Whether ITMO can choose to ignore vendor questions and requests related to response criteria and procedures, thereby potentially damaging and prejudicing vendors’ ability to compete for this award.
7. Solicitation 5400008056 violates the requirements of Section 11-35-5210 (Assistance to Minority Businesses) because it favors vendors with greater resources than the typical small and minority business, among other things that make the competitive playing field restrictive and unlevel. Among these is the requirement that all consultants placed as a result of successful participation in the resulting contract make available their employees to be hired by the state in 90 days. Small businesses cannot comply with that requirement unless they add a substantial upcharge to their normal hourly rates to cover their recruiting, hiring, relocation and onboarding costs. This upcharge will likely prevent them from bidding or being awarded positions that larger companies can price more competitively. This term is also not in the best interest of the state, as has been pointed out in my follow-up questions to Amendment 1, and an email defining how this term will result in the agencies paying artificially inflated rates, even when they do not choose to exercise the 90 day hire option.
8. Whether any contract that might result from this solicitation violates Section 11-25-20, sections (a), (b), (c), (e), (f), (g) and Section 11-35-30. To specifically determine the benefit to the state of limiting vendors from participation once awarded a contract under this contract vehicle.

9. Issues related to the delegation of authority and whether or not parties being allowed to dictate policy have the authority to do so under the law.
10. Other issues that may arise as the information requested from ITMO is received.
11. In a multi-vendor protest of the process this solicitation appears to replace, there were several unresolved issues. Among them are these:
  - Enforcing late payment penalties with agencies, and requiring TAPFIN's assistance in this since they are responsible for all invoicing;
  - A plan going forward that ensures this contract, if a fixed price contract, be awarded based on the laws regarding fixed price contracts – i.e. that price be the sole determining factor. The law appears to state that there can be no other criteria for awards in fixed price contracts other than lowest price, and further that local and minority certification preferences be adhered to;
  - The historical failure of ITMO or TAPFIN to take measures to prevent anti-competitive practices such as favoritism and “insider knowledge” that appears to be encouraged by, or at the very least, being allowed to happen untended, by TAPFIN and ITMO;
  - The failure of ITMO to protect diversity;
  - The failure of ITMO to construct a contract that is in the best interest of the state;
  - Improper delegation of authority from ITMO to TAPFIN;
  - Other issues regarding performance reporting, timely processing of candidates, etc.

This solicitation does not appear to have addressed any of these concerns that were committed to by ITMO to have the vendors withdraw their protest.

#### Remedies Requested:

1. Delay the opening of bids for Solicitation 5400008056 until a thorough review can be conducted of the current terms and conditions, and input from potential vendors, including small, local and minority businesses, can be sought to ensure that there are no limiting terms and conditions in the current solicitation that would repeat the problems (anti-competitive practices, quashing of competition, etc.) small businesses have experienced in the past.
2. Demand a report to the Attorney General and a request for an investigation into possible anti-competitive practices taking place under Contract 5400001342. Use that investigation to inform the implementation of a new and improved contract vehicle for the procurement of IT Temporary Services.
3. Ensure that this solicitation and any resulting contract is dictated by state statutes that give preferences for SC based, Certified as Small and Minority, firms are given preferences in pricing and other criteria allowed by law.
4. Change the solicitation to reflect the RFP-like criteria used in the selection of candidates for open positions. Then, scored criteria would have to be divulged to vendors, better informing our selection process, UGUs would have to score resumes appropriately based on the firm criteria, and scores would be available to vendors to assist them in future business decisions regarding selection of candidates for submission.

Thank you for your assistance in this matter. It is the sincere goal of TSI to work with ITMO to resolve these issues so that business can continue as usual. However, historically there has been little, if any, movement to improve the administration and practices of this contract vehicle, so, in the event ITMO cannot comply with these terms and make a concerted and true effort to correct these problems, we will send our perfected protest letter and will need to proceed with the protest. The same VMS that is in use currently has been selected for the new process, and business is currently continuing as usual. Therefore we rely on the auto stay guaranteed by § 11-34-4210(7). There is no compelling reason to rush the opening of this bid, as it is in the best interest of the state to review this process more thoroughly before launching another five year period of concerns.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cathy G. Lanier".

Cathy G. Lanier  
President

Cc: Geoffrey Chambers, Attorney at Law

## Cathy Lanier

---

**To:** Cathy Lanier  
**Subject:** FW: What now? State of South Carolina Suspension Strategy recommendations

**From:** Warren, Matthew [mailto:mwarren@mmo.sc.gov]

**Sent:** Tuesday, August 13, 2013 5:26 PM

**To:** Cathy Lanier; Rembelos, Arthur; Terris Riley

**Cc:** johnd@aacsc.net; tinam@aacsc.net; mham@apexsystemsinc.com; lregister@apexsystemsinc.com; cwest@apexsystemsinc.com; briand@ancgroup.com; trhodes@arionsolutionsgroup.com; mdukes@askstaffing.com; mkarani@askstaffing.com; Kasyapa.sistla@auriga.us; Durga.tata@auriga.us; bbottomley@axiom-systems.com; plythcke@axiom-systems.com; aramsburg@axiom-systems.com; sc@beacongov.com; pramsaroop@beacongov.com; kapil@bcomputing.com; bweaver@benchmarkconsulting.com; raj@brightitservices.com; butlerandbutler@windstream.net; martin.gallagher@capecode.net; laurahathaway@careermatchsolutions.com; cliffscott@careermatchsolutions.com; pmcalister@cccom.com; tvanharen@cccom.com; rhusky@cccom.com; megan.bennett@cdicorp.com; debbie.albertson@ctg.com; cbowen@coreconsultingsc.com; sales@collegiateproject.com; richard@coxlittle.com; joanne.bost@cyberwoven.com; christina@cyberwoven.com; rex@cyberwoven.com; vjackson@datastaffnc.com; blester@datastaffnc.com; rcrabill@datastaffnc.com; blangland@designinfotech.com; pankaj@digiteksoftware.com; dfallow@sc.rr.com; sjain@dynpro.com; mkallam@dynpro.com; aishwaryar@us.dynpro.com; parora@elegantsolutions.us; mhuhta@consultems.com; zamoraj@eitsllc.com; chavezl@eitsllc.com; rongholt@eitsllc.com; sekar.ponnar@enterprise-strategies.com; raj@esystems-inc.com; samrat@esystems-inc.com; vivek@esystems-inc.com; cguinyard@futuretech-inc.com; melinda.dill@gabrielsys.com; david.schuster@gabrielsys.com; president@ganaltechnologies.com; gary.mckeever@yahoo.com; HR@gatewaySI.com; Rohit.Bardaiyar@GISSite.Com; SCIT@GREYTREEPARTNERS.COM; John.Thaiss@GreymtreePartners.com; George@GTSAmerica.com; sales@gtssolutionsllc.com; steve.hall@gtssolutionsllc.com; sandeepkapoor@yahoo.com; frank@healthtechsolutionsonline.com; matt@heybo.com; plm@hippwaters-inc.com; info@gits-llc.com; jtrotter@hobietech.com; brit.moyer@us.ibm.com; fmcgee@informationandresearchspecialist.com; pasireddy@istinc.net; Manish.shah@igiusa.com; thosse@integrityc.com; dsteward@integrityc.com; sherri@ipcs.net; kumar@ipcs.net; Aravind@itcsolutions.com; afournil@ivistagroup.com; ian@jackrussellsoftware.com; brook@jackrussellsoftware.com; Tom@jackrussellsoftware.com; owenokel@att.net; lively@jsginc.com; mathias@jsginc.com; pate@jsginc.com; PJoye@JoyeGroup.net; jkhoury@LTsolns.com; dloyal@ltsolns.com; erika.hughes@icfi.com; tom@gomadmonkey.com; BILL@MAGNAITP.COM; Mike.Blood@mainline.com; scstate@makrotech.com; kiran@makrotech.com; lang.maith@malllobby.com; nryan@marathonstaffing.com; kstrickland@marathonstaffing.com; melihp@yahoo.com; sales@meridianpartners.us; mickey.owens@microstaffit.com; dianne.caro@microstaffit.com; katta@mindsparkit.com; sgoff@mvsolutions.com; kiran@n2nservices.com; jlem@bellsouth.net; bbrewer@netarasys.com; ghamby?@netsourcek12.com; glusk@netsourcek12.com; Jacqu'e Riley; prasu@northpointcorp.com; jeannie.lu@novalink-solutions.com; ramesh@novalink-solutions.com; Huu.phan@novalink-solutions.com; diana@ntelicor.com; amanpreet.sabherwal@keane.com; bill.jeffries@nttdata.com; Terri.Rein@nttdata.com; pabdelmalak@nwnit.com; drowland@nwnit.com; doris.rowland1@gmail.com; scollett@nwnit.com; dsago@nwnit.com; kbrower@nwnit.com; dfriedline@nwnit.com; gbennett@olhinc.com; pdambrogi@olhinc.com; pflowers@olhinc.com; robert.cameron@orioninc.com; todd@palmettocomputerlabs.com; hrusa@pegasyssoft.com; sunny@pegasyssoft.com; pat.broussard@pmgpro.com; mbilal@premierstaffingsource.com; pwilliams@premierstaffingsource.com; mcooks@premierstaffingsource.com; scooks@premierstaffingsource.com; eharris@premierstaffingsource.com; gwoods@procomservices.com; darrel.roether@pssisolutions.com; vineet@pyramidci.com; balexander@recruitingsolutionsonline.com; mheil@recruitingsolutionsonline.com; kishore@redsalsa.com; kiran@redsalsa.com; phani@redsalsa.com; masteame@rhi.com; Wayne.Atkinson@rolta.com;

**EXHIBIT D**  
**Email From Matt Warren**

gmadabushi@saptanet.com; jvsanchelli@gmail.com; john.kuncham@solomonsint.com;  
aruna.athota@solomonsint.com; paul.solomon@solomonsint.com; jthakrar@solu-soft.com; kirant@solu-soft.com;  
mballard@spartantechnology.com; cbrink@spartantechnology.com; epruitt@spartantechnology.com; sam@stellent-  
solutions.com; rshankar@sysnetts.com; neha.desai@sstech.us; briany@teamia.com; jshivers@tscharleston.com;  
rshivers@tscharleston.com; mconnolly@maxisgroup.net; jwesley@maxisgroup.net; mzahradnik@maxisgroup.net;  
mike@trainingconcepts.com; eve@trainingconcepts.com; tom.gross@tsgglobalsolutions.com;  
wendy.roth@TSGGlobalSolutions.com; jobs@tusgi.com; ashleys@uscomputinginc.com; prasatk@usmsystems.com;  
umeshk@usmsystems.com; gopal.mishra@v3it.com; vandana.padgaonkar@v3it.com; Leo@valiantsolutions.com;  
nvoight@valiantsolutions.com; mraydo@valiantsolutions.com; manbir.khurana@vectorconsulting.com;  
scbids@vgroupinc.com; aarputharaj@vsiiusa.com; wade@wingardgraphics.com; Yeeylim@gmail.com; Anthony Cooper  
**Subject:** RE: What now? State of South Carolina Suspension Strategy recommendations

The purpose of Tapfin's email was to educate and provide (free) training to help with the contract. Any ideas you want to provide the state, you are free to brainstorm and discuss, and I am happy to consult on ideas and how they could possibly work in a contract scenario. Tapfin, and the State realize that our contract is not perfect, and are willing to fix it. Finding ways to do that that are within the limits of power the Information Technology Management Office has, is the challenge.

Do I believe some vendors have an 'in' at agencies? I do. Can I prove it? No. How can I write a contract that discourages this? Write regulations to say talking to vendors about upcoming jobs isn't allowed? That's in the contract. No identifying marks on resumes? That's in the contract. Is all of this easy to get around? Yes.

To have metrics speak to the quality of consultants will be near impossible. ITMO does not have the authority to force agencies to provide feedback on their candidates. State Agencies already view ITMO as a speed bump to their procurement process. We will not be requiring them to complete more paperwork. At this time, all we have to show vendor participation is hard metrics.

When the first issuance of the solicitation came out, it was written so you would need to respond 40% of the time, to the categories You (as a vendor) selected that met the minimum requirements. I was not managing this contract at that time, and the 'not interested' button was introduced. Well guess what happened? Vendors would either submit a candidate, or click not interested, everyone was at 100% compliance, the vendor list inflated to over 200 vendors with no one being removed. That State does not provide enough work for 200 Vendors to receive any substantial portion of funds.

These are the problems, I, Matthew Warren, face when trying to tie the SC Procurement Code with a contract that makes state agencies happy, and the vendor community happy. The most common emails I have gotten this week have been 'we want to provide the best QUALITY candidate, and if they aren't a perfect fit, we won't submit them'. State government operates on meeting minimum specs. You should submit qualified candidates if you have them. If someone meets the minimum specs (qualified), they should be submitted.

Vendors on this contract have the power to sign up for the categories they wish. You do not have to sign up for everything out there. After you have selected the categories you are signed up for, we expect that just under half the time, you can find a consultant that meets the minimum specs. If you do this, you are fulfilling the requirements of the contract. If you don't believe your candidate is the 'best fit' – leave that to the agency to decide. If they are selected for an interview, or even hired, then it would seem they were above their peers. The resume submission should be void of all vendor identification, so there is no risk of that you would be putting out an image of your company that you didn't want to have.

Below are the problems I would like to have your input on. Keep in mind this can be delivered straight to my email, not cc'd to everybody on this list, and this is not the purpose of the meeting Tapfin wished to provide. Tapfin thought it

**EXHIBIT D**  
**Email From Matt Warren**

would be in everyone's interest to discuss Contract Modification 2, issued in February of 2012, enacted in April of 2012, which all of you have been subject to, and meeting the standards of since that time.

Problems I am interested in hearing solutions for:

- Limiting vendor pool
- Vendor Evaluation criteria while on contract
- Preventing 'backdoor' hires
- A list of your problems (as a vendor community) with the contract (and any possible solutions)

You will find my contact information below, I have a lot of work on my plate (other than the IT Temp solicitation) at this time, please take some time to think about your responses and PLEASE EMAIL them to me, I will be putting them all in a folder in my Outlook to go through when I have the time. The IT Temp solicitation is due to expire in August of next year, we expect to issue a solicitation in late Spring of 2014, in order to have awards onboarding into the MSP/VMS with no lapse in service to the State.

Matthew Warren  
Procurement Manager  
Phone: (803) 896-0351  
Email: [mwarren@itmo.sc.gov](mailto:mwarren@itmo.sc.gov)

NIKKI R. HALEY, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES  
DELBERT H. SINGLETON, JR.  
DIVISION DIRECTOR  
(803) 754-8018

MICHAEL B. SPICER  
INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
(803) 757-0600  
FAX (803) 757-0639

HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE  
CHAIRMAN, HOUSE WAYS AND MEANS

## Protest Decision

**Matter of:** Protest of TSI, Inc.

**Case No.:** 2016-203

**Posting Date:** October 29, 2015

**Contracting Entity:** Information Technology Management Office

**Solicitation No.:** 5400008056

**Description:** IT Temporary Staff Augmentation Services

### DIGEST

Protest asserting broad challenges to the structure of contracts solicited under a fixed price bid to provide IT Temporary Staff Augmentation Services is denied for vagueness, untimeliness, and/or failure to state a claim for relief.

### AUTHORITY

The Chief Procurement Officer conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

## **DECISION**

TSI, Inc. (TSI) protests Amendment 1 to the solicitation for IT Temporary Staff Augmentation Services by the Information Technology Management Office. (ITMO) TSI's letter of protest is incorporated by reference. [Attachment 1]

The CPO denies the protest.

### **Findings of Fact**

Fixed Price Bid Issued:	09/02/2015
Amendment 1 Issued	09/17/2015
Protest Received	10/01/2015
Amendment 2 Issued	10/02/2015

### **Background**

ITMO issued this Fixed Price Bid on September 2, 2015. The solicitation is designed to allow a Using Governmental Unit (UGU) to augment its information technology staff. The Temporary IT Staff Augmentation contract is *not* for the acquisition of projects that are paid on a deliverables basis. Individual consultants placed with a UGU are employees of the suppliers whose fixed price bids are accepted. UGUs pay the suppliers for consultant services on an hourly basis. Supplier contracts will be managed by a Managed Service Provider (MSP), TAPFIN, using the internet-based Vendor Management System (VMS) known as Beeline.<sup>1</sup>

The purpose of fixed price bidding is to provide multiple sources of supply for specific services, supplies, or information technology based on a preset maximum price which the State will pay for such services, supplies, or information technology. There is no guarantee that a contractor will receive business under these contracts. There are multiple contractors providing essentially the same goods or services at a pre-set maximum price. Typically, it is up to the contractor to find agencies in need of the goods or services available under these contracts and market itself to

---

<sup>1</sup> The MSP contract was awarded June 26, 2015, without protest. If ITMO exercises all renewals, the contract will run through July 2022.

the agencies. Agencies are free to purchase from the contractor they choose based on their own criteria which might include past experience with a contractor, proximity to the point of consumption, preferential delivery, etc. Many agencies have held a secondary competition among all or a subset of the contractors using pricing below the pre-set maximum when determining the contractor from whom they will purchase. The IT Temporary Staff Augmentation contract incorporates a variation of this secondary process by requiring the UGU to submit a statement of work to the MSP who notifies all contractors of the agency requirement. Interested contractors can submit resumes to the MSP who in turn submits qualified resumes to the UGU. The initial application process is vendor neutral, that is, no supplier or consultant identification information may be included on the résumés submitted.<sup>2</sup> The UGU is required to interview at least three contractor candidates prior to selecting the contractor. When the contractor begins work for the agency they record their time in the VMS. Once the agency approves the time worked, the MSP invoices the UGU for the approved time worked, the UGU pays the invoice amount to the MSP who in turn pays the contractor less an administration fee.

The existing contract established a system for monitoring contractor performance and set a minimum level of performance contractors are required to maintain. Failure to maintain this minimum level of performance will result in the cancellation of the contract. It also set forth a number of activities that could result in the suspension or termination of the contractor. Today, there are 208 active suppliers on the contract, who employ hundreds of individual consultants. There are 408 consultants on assignment to UGUs at this time. In calendar year 2014, 614,214.25 hours were worked and the gross amount invoiced was \$53,476,624.62 under this contract.

This solicitation will replace the current contract, which has been in use since 2009.<sup>3</sup> It will also be managed by TAPFIN, using Beeline.

---

<sup>2</sup> See State of South Carolina Business Rules, <http://vmp.tapfin.com/south-carolina/program-overview/> (last viewed October 29, 2015).

<sup>3</sup> The contract has been extended until the earlier of August 2016 or award of a replacement contract.

## **Discussion**

This Fixed Price Bid was issued on September 2, 2015. A prospective bidder must protest the solicitation within 15 days of the issuance of the solicitation or the amendment if the amendment is at issue. Section 11-35-4210(1)(a). Days are defined in Section 11-35-310(13) as calendar days, meaning that the latest time for a protest of the solicitation to be timely received by the CPO was the close of business on September 17, 2015. Amendment 1 was issued on September 17, 2015, making the last time to protest issues related to Amendment 1, the close of business on October 2, 2015. The CPO only has jurisdiction over protests received within the prescribed time frames. TSI's protest was received by the CPO at 8:26 AM on October 2, 2015. Consequently the CPO only has jurisdiction to review issues of protest that are directly related to issues contained in Amendment 1.<sup>4</sup>

In its protest, TSI indicated that it considered its letter to be a "notice of protest" that it intended to perfect by amendment at a later date. The "notice of protest" set forth general areas of concern without, in many cases, enough particularity to give notice of the issues to be decided. No amendment to the protest was received prior to the close of business on the last day allowed for protest.

TSI's first issue of protest questions the legality of any contracts resulting from this solicitation as follows:

Whether any contract that might result from this solicitation is authorized by State Procurement Law. This solicitation and Amendment will result in a Fixed Price contract, for which the law is specific in how it should be administered and used. Section 11-35-1525 (7) indicates that award must be made to all responsive and responsible bidders. Item (8) of this same section states that any bidder that subsequently furnishes evidence of responsibility and responsiveness (using the same criteria as being awarded a place on the list of vendors in the first place) must be added to the award. There is no legal citation for subjecting awardees to any participation or other criteria AFTER award, and no legal basis for any vendor to ever be removed from participation, or for the contract award list to be limited in any manner.

---

<sup>4</sup> Amendment 2 simply postponed the bid opening. Similarly, Amendment 4 advised bidders that the solicitation was "on hold" indefinitely.

This language alleges no specific violation of the Code and lacks the specificity required by Section 11-35-4210(2)(a) to give notice of the issues to be decided. This issue of protest is denied.

The CPO notes that ITMO has maintained a state term contract for IT staff augmentation for nearly ten years and this is little more than a re-solicitation of those requirements. As TSI points out, contracts will be awarded to all responsive and responsible bidders who agree to perform for the fixed pricing in the solicitation. After the initial award, any responsive and responsible bidder will be added to the list of contractors as provided for in the solicitation. This solicitation includes certain performance criteria that a contractor must meet during the term of the contract. These are requirements of the contract. The failure of a contractor to meet the requirements of a contract will result in termination of that contractor. If that contractor responds to the fixed price bid in the future, its previous performance will be taken into consideration in determining that contractor's responsibility as defined in Section 11-35-1410(6). TSI's issue of protest suggests that the Code in some way guarantees a bidder keeps his contract even when not meeting the requirements of the contract. In this case requiring contractors to meet certain minimum levels of performance for the duration of the contract is a contractual requirement and good stewardship of the taxpayer's interests.

TSI's second issue of protest questions:

Whether any contract that might result from this solicitation will violate state law in other ways, specifically, §11-35-45, in that vendors do not have control over what is printed on the invoices the agencies receive from the Vendor Manager (Tapfin Process Solutions) and are, therefore, being forced to waive the late fee penalty without providing consent to do so.

This issue was apparent from the original solicitation, and is not addressed in Amendment 1. Consequently the CPO lacks jurisdiction and this issue of protest is dismissed.

The CPO notes ITMO issued Amendment 3 on October 14, 2015, which included the following:

**Changes to Original Solicitation are as follows:**

Section III. SCOPE OF WORK/SPECIFICATIONS, page 23, Section 18.  
Invoices, 3<sup>rd</sup> paragraph, add the following to the end of the paragraph:

In accordance with Section 11-35-45 of the SC Code of Laws, a late fee may be assessed if payment is not received within thirty (30) work days from the invoice date on the final invoice. This language shall appear on the invoices generated by Beeline and TAPFIN and received by the UGU's.

Even if jurisdiction were to exist, Amendment 3 makes moot this ground of protest.<sup>5</sup>

TSI's next issue of protest is:

Whether any contract that might result from this solicitation, that uses criteria other than price to determine final candidate selection, violates §11-35-1525. Further, whether the contract violates §11-35-1520 (9), which pertains to pricing alone and contains determinations that take into consideration whether the firms are SC based, Certified as Small and Minority, etc. Whether the contract violates §11-35-1520 (10) which determines award of business based on price alone.

Again, this issue was apparent from the original solicitation, and is not addressed in Amendment 1. Consequently the CPO lacks jurisdiction and the issue is dismissed<sup>6</sup>.

TSI's next issue of protest is as follows:

Whether any contract that might result from this solicitation will be anti-competitive, and clearly recognized as anti-competitive by officials of ITMO in charge of the contract. Recent statements by an ITMO Contract Manager appear to invoke §11-35-2420 and requires the reporting of anti-competitive practices. The evidence suggests, and everyone knows that "under the table" deals are

---

<sup>5</sup> TAPFIN is apparently including this language on current invoices for consultant services. *See* Attachment 2.

<sup>6</sup> Every responsive and responsible bidder will be awarded a contract as a result of this fixed price bid. Consequently there are multiple contractors offering the same service. Under other fixed price contracts, agencies are free to use any criteria they choose to determine which contractor they will purchase from. The process outlined in this solicitation establishes a contractual requirement that every agency use the same process to determine which contractor they purchase from. There is nothing in the Code that prevents the establishment of this type of contractual requirement. TSI raises a concern about Section 11-35-1520(9) which sets forth criteria to be used to determine the successful bidder when two or more bidders submitted the same price. Since all responsive and responsible offerors will be awarded a contract as a result of this solicitation, there is no need to resolve a tie bid situation to determine which contractor will receive the award. TSI also raises concern that this contract is not being awarded in accordance with Section 11-35-1520(10). That is true. These contracts will be awarded in accordance with Section 11-35-1525(7) as required by the Code.

happening.<sup>7</sup> A former procurement employee has already admitted in an email some time ago, of his knowledge of the existence of anti-competitive practices. It logically follows that this one individual was not the only one privy to such activities. Yet, there has never been an investigation requested of the Attorney General as is required by law. This contract does nothing to alleviate the same issues surrounding anti-competitive practices that existed and were the subject of a multi-vendor protest a few years ago. At that time, the vendors were promised that ITMO would make significant changes and implement policies and procedures to eliminate these practices, yet the contract terms and conditions of the current solicitation do nothing to alleviate these.

This issue was apparent from the original solicitation, and is not addressed in Amendment 1. Additionally, it lacks specificity and does not put the state on notice of the issues to be decided. Finally, it fails to state a violation of the Code by the solicitation or any amendment. This issue of protest is denied.

TSI's next issue of protest is as follows:

Article 11, Section 11-35-3410 provides for modifications and terminations of contracts for supplies and services (including Information Technology). Nowhere in this section is there mention of vendors being terminated or suspended from an awarded contract list based on quotas or any other criteria such as those listed in the solicitation.

Section 11-35-3410 *authorizes* the State Fiscal Accountability Authority to establish by regulation certain mandatory contract provisions. §§11-35-3410(1) and (3). SFAA has never exercised this authority for contracts for supplies, services, or information technology. The performance requirements to which TSI refers in this complaint are not regulations, nor are they in any way prohibited or limited by Section 11-35-3410. If TSI believes those requirements present an unreasonable risk to its business model, it is free to decline to bid. *See* 1981 S.C. Op. Atty. Gen. No. 81-52 (“[I]t is the opinion of this office that [SCDOT] contract provisions, such as those in question here, are not regulations within the meaning of Code Section 1-23-10(4) and

---

<sup>7</sup> While this vendor has repeatedly alleged illegal or anti-competitive practices in the State's acquisition of IT staff augmentation services, absolutely no evidence of illegal or anti-competitive practices has been presented to the CPO by this bidder or any other participant in this public procurement process. If TSI or anyone else provides credible, factual information about illegal or anti-competitive practices, the CPO will act appropriately and consistent with his responsibilities under the Code and regulations.

therefore do not have to undergo public or legislative scrutiny pursuant to the Administrative Procedures Act. Any prospective bidder who does not wish to be bound by any of the special provisions may simply decide not to bid on contracts containing those provisions.”) There is no violation of the Code and this issue of protest is denied.

TSI’s next issue of protest is as follows:

Whether ITMO can choose to ignore vendor questions and requests related to response criteria and procedures, thereby potentially damaging and prejudicing vendors’ ability to compete for this award.

This issue of protest fails to state a violation of the Code for which relief can be granted. There is no statutory requirement that the State respond to every question that a prospective bidder or offeror submits to the procurement officer prior to submission of bids. It also lacks specificity and does not put the State on notice of the issues to be decided. This issue of protest is denied.

TSI’s next issue of protest is as follows:

Solicitation 5400008056 violates the requirements of Section 11-35-5210 (Assistance to Minority Businesses) because it favors vendors with greater resources than the typical small and minority business, among other things that make the competitive playing field restrictive and unlevel. Among these is the requirement that all consultants placed as a result of successful participation in the resulting contract make available their employees to be hired by the state in 90 days. Small businesses cannot comply with that requirement unless they add a substantial upcharge to their normal hourly rates to cover their recruiting, hiring, relocation and onboarding costs. This upcharge will likely prevent them from bidding or being awarded positions that larger companies can price more competitively. *[sic]* This term is also not in the best interest of the state, as has been pointed out in my follow-up questions to Amendment 1, and an email defining how this term will result in the agencies paying artificially inflated rates, even when they do not choose to exercise the 90 day hire option.

TSI alleges that the following requirement places small and minority businesses at a disadvantage.

32. If the UGU plans to hire a Consultant as a state employee, the UGU will retain the Consultant placed by the Supplier on the Supplier’s payroll for a

minimum of ninety (90) calendar days prior to hiring the Consultant as a state employee, unless the Supplier and UGU agree otherwise. [Solicitation, Page 25]

This issue was apparent from the original solicitation, and is not addressed in Amendment 1. Consequently the CPO lacks jurisdiction. This issue of protest is denied.

Even if jurisdiction existed, TSI fails to state any claim for relief here. This is a fixed price bid and the State sets the maximum hourly rate it is willing to pay. This hourly rate includes the amount paid to the consultant, the supplier's costs and supplier profit. Normally the supplier figures to recover its costs over the term of the engagement. A shorter recovery period results in a higher recovery cost per hour which must be off-set by a lower hourly rate to the consultant or less supplier profit. This solicitation allows the agency to hire the consultant after a minimum of 90 days. TSI argues that having to recover its supplier costs over 90 days creates a disadvantage to small and minority businesses.

This is a "Temporary Staff Augmentation" contract. For any number of reasons, agencies usually have no interest in converting a consultant to a full time employee, especially after only 90 days on a project. TSI has acknowledged as much. When an agency publishes a requirement for temporary staff augmentation, it must include the actual budget for the position and the budget for the project. The decision to hire an employee or a consultant has probably already been reviewed. The previous contracts had no prohibition against agencies hiring consultants as full time employees and no guarantee of a minimum period of service before an agency could hire a consultant. In theory, an engagement could last one hour, one day, one week, one month or more. This provision provides some protection to the supplier that its contract will last at least 90 days before the agency could hire the consultant. Apparently some minority vendors have been quite successful without this protection as the supplier receiving the second most business under the current contract is a South Carolina certified minority and at least two other minority vendors, including TSI, have received business during the current year.

TSI protests:

Whether any contract that might result from this solicitation violates Section 11-25-20, sections (a), (b), (c), (e), (f), (g) and Section 11-35-30. To specifically

determine the benefit to the state of limiting vendors from participation once awarded a contract under this contract vehicle.

The referenced paragraphs of Section 11-35-20 are:

- (a) to provide increased economy in state procurement activities and to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the State and in compliance with the provisions of the Ethics Government Accountability and Campaign Reform Act;
- (b) to foster effective broad-based competition for public procurement within the free enterprise system;
- (c) to develop procurement capability responsive to appropriate user needs;
- (e) to require the adoption of competitive procurement laws and practices by units of state and local governments;
- (f) to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement;
- (g) to provide safeguards for the maintenance of a procurement system of quality and integrity with clearly defined rules for ethical behavior on the part of all persons engaged in the public procurement process;

This issue of protest is dismissed for lack of specificity in that it fails to state how contracts awarded under this solicitation would violate the various paragraphs cited. However it should be noted that there are 208 suppliers under the current contract. One hundred and fifteen suppliers have provided services under the current contract receiving a total of more than \$56 million dollars year-to-date. No single contractor has received more than 8% of that \$56 million dollars. This certainly reflects effective broad-based competition that appears to meet the needs of the agencies within the confines of the Code and Regulations. If there are unfair or unethical practices by some of the participants under this contract, they are not very effective.

TSI indicated that it intended to protest, "Issues related to the delegation of authority and whether or not parties being allowed to dictate policy have the authority to do so under the law." The CPO did not receive any additional information about this issue and it is dismissed for lack of specificity.

Protest Decision, page 11  
Case No. 2016-203  
October 29, 2015

For the reasons stated above the protest of TSI, Inc. is denied.

For the Information Technology Management Office

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer  
Chief Procurement Officer

Attachment 1



October 1, 2015

Mike Spicer, Chief Procurement Officer  
SFAA, Div. of Procurement Services, ITMO  
1201 Main Street, Suite 601  
Columbia, SC 29201

RE: Protest of Solicitation 5400008056, IT Temporary Services

Dear Mr. Spicer:

I am respectfully advising you of Technology Solutions, Inc.'s Protest of Solicitation number 5400008056, IT Temporary Services, Amendment 1 and all underlying documents. According to my records, the Amendment was issued on September 17, 2015. Pursuant to S.C. Code of Laws, my calculations make the notification of protest due on or before October 2, 2015. Please consider this our notice of protest that will be perfected in an amendment provided to you on or before October 16, 2015. We have requested information from ITMO related to this protest, and have received a partial response. We need additional time to evaluate the information received so that we may perfect our FOIA to receive the additional information we need on that subject and potentially others that have been raised as a result of the Amendment to the Solicitation. If any of these dates have been miscalculated, please provide the correct dates by which we must provide our amended protest.

In general, the nature of our protest will include, but not be limited to, the following:

1. Whether any contract that might result from this solicitation is authorized by State Procurement Law. This solicitation and Amendment will result in a Fixed Price contract, for which the law is specific in how it should be administered and used. Section 11-35-1525 (7) indicates that award must be made to all responsive and responsible bidders. Item (8) of this same section states that any bidder that subsequently furnishes evidence of responsibility and responsiveness (using the same criteria as being awarded a place on the list of vendors in the first place) must be added to the award. There is no legal citation for subjecting awardees to any participation or other criteria AFTER award, and no legal basis for any vendor to ever be removed from participation, or for the contract award list to be limited in any manner.
2. Whether any contract that might result from this solicitation will violate state law in other ways, specifically, §11-35-45, in that vendors do not have control over what is printed on the invoices the agencies receive from the Vendor Manager (Tapfin Process Solutions) and are, therefore, being forced to waive the late fee penalty without providing consent to do so.

3. Whether any contract that might result from this solicitation, that uses criteria other than price to determine final candidate selection, violates §11-35-1525. Further, whether the contract violates §11-35-1520 (9), which pertains to pricing alone and contains determinations that take into consideration whether the firms are SC based, Certified as Small and Minority, etc. Whether the contract violates §11-35-1520 (10) which determines award of business based on price alone.
4. Whether any contract that might result from this solicitation will be anti-competitive, and clearly recognized as anti-competitive by officials of ITMO in charge of the contract. Recent statements by an ITMO Contract Manager appear to invoke §11-35-2420 and requires the reporting of anti-competitive practices. The evidence suggests, and everyone knows that "under the table" deals are happening. A former procurement employee has already admitted in an email some time ago, of his knowledge of the existence of anti-competitive practices. It logically follows that this one individual was not the only one privy to such activities. Yet, there has never been an investigation requested of the Attorney General as is required by law. This contract does nothing to alleviate the same issues surrounding anti-competitive practices that existed and were the subject of a multi-vendor protest a few years ago. At that time, the vendors were promised that ITMO would make significant changes and implement policies and procedures to eliminate these practices, yet the contract terms and conditions of the current solicitation do nothing to alleviate these.
5. Article 11, Section 11-35-3410 provides for modifications and terminations of contracts for supplies and services (including Information Technology). Nowhere in this section is there mention of vendors being terminated or suspended from an awarded contract list based on quotas or any other criteria such as those listed in the solicitation.
6. Whether ITMO can choose to ignore vendor questions and requests related to response criteria and procedures, thereby potentially damaging and prejudicing vendors' ability to compete for this award.
7. Solicitation 5400008056 violates the requirements of Section 11-35-5210 (Assistance to Minority Businesses) because it favors vendors with greater resources than the typical small and minority business, among other things that make the competitive playing field restrictive and unlevel. Among these is the requirement that all consultants placed as a result of successful participation in the resulting contract make available their employees to be hired by the state in 90 days. Small businesses cannot comply with that requirement unless they add a substantial upcharge to their normal hourly rates to cover their recruiting, hiring, relocation and onboarding costs. This upcharge will likely prevent them from bidding or being awarded positions that larger companies can price more competitively. This term is also not in the best interest of the state, as has been pointed out in my follow-up questions to Amendment 1, and an email defining how this term will result in the agencies paying artificially inflated rates, even when they do not choose to exercise the 90 day hire option.
8. Whether any contract that might result from this solicitation violates Section 11-25-20, sections (a), (b), (c), (e), (f), (g) and Section 11-35-30. To specifically determine the benefit to the state of limiting vendors from participation once awarded a contract under this contract vehicle.

9. Issues related to the delegation of authority and whether or not parties being allowed to dictate policy have the authority to do so under the law.
10. Other issues that may arise as the information requested from ITMO is received.
11. In a multi-vendor protest of the process this solicitation appears to replace, there were several unresolved issues. Among them are these:
  - Enforcing late payment penalties with agencies, and requiring TAPFIN's assistance in this since they are responsible for all invoicing;
  - A plan going forward that ensures this contract, if a fixed price contract, be awarded based on the laws regarding fixed price contracts – i.e. that price be the sole determining factor. The law appears to state that there can be no other criteria for awards in fixed price contracts other than lowest price, and further that local and minority certification preferences be adhered to;
  - The historical failure of ITMO or TAPFIN to take measures to prevent anti-competitive practices such as favoritism and “insider knowledge” that appears to be encouraged by, or at the very least, being allowed to happen unintended, by TAPFIN and ITMO;
  - The failure of ITMO to protect diversity;
  - The failure of ITMO to construct a contract that is in the best interest of the state;
  - Improper delegation of authority from ITMO to TAPFIN;
  - Other issues regarding performance reporting, timely processing of candidates, etc.

This solicitation does not appear to have addressed any of these concerns that were committed to by ITMO to have the vendors withdraw their protest.

Remedies Requested:

1. Delay the opening of bids for Solicitation 5400008056 until a thorough review can be conducted of the current terms and conditions, and input from potential vendors, including small, local and minority businesses, can be sought to ensure that there are no limiting terms and conditions in the current solicitation that would repeat the problems (anti-competitive practices, quashing of competition, etc.) small businesses have experienced in the past.
2. Demand a report to the Attorney General and a request for an investigation into possible anti-competitive practices taking place under Contract 5400001342. Use that investigation to inform the implementation of a new and improved contract vehicle for the procurement of IT Temporary Services.
3. Ensure that this solicitation and any resulting contract is dictated by state statutes that give preferences for SC based, Certified as Small and Minority, firms are given preferences in pricing and other criteria allowed by law.
4. Change the solicitation to reflect the RFP-like criteria used in the selection of candidates for open positions. Then, scored criteria would have to be divulged to vendors, better informing our selection process, UGUs would have to score resumes appropriately based on the firm criteria, and scores would be available to vendors to assist them in future business decisions regarding selection of candidates for submission.

Mr. Spicer  
Page 4

Thank you for your assistance in this matter. It is the sincere goal of TSI to work with ITMO to resolve these issues so that business can continue as usual. However, historically there has been little, if any, movement to improve the administration and practices of this contract vehicle, so, in the event ITMO cannot comply with these terms and make a concerted and true effort to correct these problems, we will send our perfected protest letter and will need to proceed with the protest. The same VMS that is in use currently has been selected for the new process, and business is currently continuing as usual. Therefore we rely on the auto stay guaranteed by § 11-34-4210(7). There is no compelling reason to rush the opening of this bid, as it is in the best interest of the state to review this process more thoroughly before launching another five year period of concerns.

Respectfully submitted,

*Cathy G. Lanier*  
Cathy G. Lanier  
President

Cc: Geoffrey Chambers, Attorney at Law

Attachment 2



Invoice and Accrual - PO

Run Date: 9/8/2015

All invoice balances must be paid as is. Dollar amounts listed on this invoice should not be modified at any time, any corrections identified/required must be brought to the TAPFIN Program Office's attention and will be reflected in the following months invoice. The State of South Carolina has 30 business days from the 7th to pay the monthly final invoice. A late fee may be assessed if payment is not received within 30 business days from the invoice date on the final invoice (Section 11-35-45 of the SC Code of Laws).

Page 1 of 5

Bill to: State of South Carolina  
Columbia, SC

Remit to: TAPFIN, Manpower Company  
P.O. Box 905406  
Charlotte, NC 28290-5406

Currency: USD (US Currency)

Statement Date: 9/7/2015

Billing Period: 8/1/2015 - 8/31/2015 (Final Invoice)

Invoice Number: 4522

Assignment - PO Number: 4600389763

Bill To Cost Center: State Fiscal Accountability Authority (SFAA) -  
E550100000

Supplier: ENTERPRISE IT SOLUTIONS LLC

Invoice Number	Organization Name	Supplier Name	Consultant	Bill To Cost Center	Project Code	PO Number	Hiring Manager	Week Ending Date	Pay Code	Units	Bill Rate	Gross Amount	Net Amount Due
4522	State Fiscal Accountability Authority (SFAA)	ENTERPRISE IT SOLUTIONS LLC	Villines, Jacob	E550100000	B&CB - Desktop Support	4600389763	Julian, Elaina	8/8/2015	RT	40.00	\$35.00	\$1,400.00	\$1,400.00
4522	State Fiscal Accountability Authority (SFAA)	ENTERPRISE IT SOLUTIONS LLC	Villines, Jacob	E550100000	B&CB - Desktop Support	4600389763	Julian, Elaina	8/15/2015	RT	40.00	\$35.00	\$1,400.00	\$1,400.00
										<b>80.00</b>	<b>\$2,800.00</b>	<b>\$2,800.00</b>	

ENTERPRISE  
IT  
SOLUTIONS  
LLC

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised September 2015)*

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>

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 111.1 of the 2015 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.**