



SPECIAL REVIEW OF PROCUREMENT OF COMMISSION 2.0 AT THE STATE CORPORATION COMMISSION

AUGUST 2015

Auditor of Public Accounts
Martha S. Mavredes, CPA

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(804) 225-3350



REVIEW SUMMARY

We conducted a special review of procurement SCC-12-020-SCC, Commission 2.0, by the State Corporation Commission (SCC) at the request of the SCC to review allegations made by their Protesting Vendor. Our review did not find support for the allegations that would have materially affected the awarding of the contract. The only area of concern we noted related to the Awarded Vendors price; however, if the SCC had used the highest price provided by the Awarded Vendor and subtracted optional services from the Protesting Vendor's proposed price, it would not have changed the final ranking of the proposals or the subsequent intent to award the contract.

While this special review, which was limited to the procurement of Commission 2.0, did not find support for the allegations, we still recommend that the SCC clarify what procurement rules and regulations apply to them as an independent department of government, and assess the current policies and procedures and change them as needed to agree with this clarified understanding. We first reported these recommendations in our 2012 audit of the SCC and repeated them again in our 2014 audit. Copies of prior audit reports on the SCC can be found by visiting www.apa.virginia.gov and clicking on the Reports tab at the top and then searching on "State Corporation Commission" in the Report Title box.

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REASON FOR THE REVIEW

This review relates to the State Corporation Commission's (SCC) Request for Proposal (RFP) SCC-12-020-SCC, referred to as Commission 2.0. The goal of this RFP was for the SCC to find and select a vendor to aid the Commission in improving its business processes as well as replace its core system. As the RFP process was nearing its conclusion with the awarding of the contract, the SCC received a protest on October 23, 2014, from one of the vendors that submitted an offer in response to the RFP, which we reference as the Protesting Vendor throughout this report. As a result of the protest, the SCC initiated an internal review of its practices under this RFP. On November 3, 2014, the SCC issued a decision to the Protesting Vendor denying the protest.

On November 12, 2014, the SCC received a request for administrative appeal from the Protesting Vendor as allowed for in Sections 2.2-4360 and 2.2-4365 of the Code of Virginia. At the time of the request, the SCC did not have an administrative appeal process. The SCC notified the Protesting Vendor that it would not be sound policy to establish the appeal procedures during an active protest and that the SCC would request the Auditor of Public Accounts to independently review compliance with the Virginia Public Procurement Act as well as the allegations of fraud and conflicts of interest made by the Protesting Vendor.

On December 1, 2014, the Auditor of Public Accounts (APA) received a letter from the SCC (see [Appendix A](#)) requesting a review of the procurement SCC-12-020-SCC for compliance with applicable laws and best practices, as well as, allegations of fraud and conflict of interest. On December 3, 2014, the APA responded to the request for review (see [Appendix B](#)) stating that the APA would perform the requested review of procurement SCC-12-020-SCC and would begin the review around the middle of January 2015 as staffing permitted.

SCC AND COMMISSION 2.0 BACKGROUND

The SCC is the regulating authority over most business and economic interests within the Commonwealth of Virginia. The power of the SCC is derived directly from the Virginia's Constitution. The SCC was created to replace the Board of Public Works and the Office of the Railroad Commission. It is unique in that it has all three powers of government: executive, legislative, and judicial. In addition, while it is a Commonwealth agency, it is independent of state government. The decisions of the SCC can only be appealed to the Supreme Court of Virginia.

The SCC, as part of the procurement of Commission 2.0, sought proposals to upgrade certain computer hardware and software in order to efficiently manage information flowing into and through the SCC. As part of the process, two individual vendor proposals were selected to continue through the RFP negotiation process. Based on this process, the SCC selected a vendor to award the contract to, which we reference as the Awarded Vendor throughout this report. Subsequent to the SCC's Notice of Intent to Award, the Protesting Vendor filed a protest of the award. The SCC conducted an internal review of its solicitation, and finding no deficiency, denied the protest.

SCC INTERNAL REVIEW FINDINGS

On November 3, 2014, the SCC responded to the Protesting Vendor of solicitation SCC-12-020-SCC (See [Appendix C](#)) to communicate the results of their internal review. The determination of their internal review was that the SCC's decision to award the contract complies with the applicable state law, is based on the substantive merits of the respective proposals, and was not arbitrary or capricious.

THE PROTESTING VENDOR'S ALLEGATIONS AND INDIVIDUAL OBSERVATIONS

To fulfill the request to review the procurement of Commission 2.0, we applied procedures to each allegation communicated to us in the SCC's December 1, 2014, letter to the APA. Each of the Protesting Vendor's allegations is followed by background information to provide context and APA's procedures and observations.

Protesting Vendor's Allegation: SCC failed to give proper weight to the Protesting Vendor's experience

Background:

In reviewing and scoring a proposal, it is necessary that each individual score is weighted the same, which is done through a consistent application of the assigned weight. This is important so that all proposals scores can then be compared to one another. If different scoring weights are used for each vendor it could potentially give an advantage to one vendor over another.

For the purpose of the Commission 2.0 solicitation, experience constituted six percent of the total possible score available. The SCC is accused of not giving proper weight to the level of experience exhibited by the Protesting Vendor in their proposal in comparison to the Awarded Vendor.

Procedure:

To determine if the SCC consistently applied the weights for each vendor, we first reviewed the RFP to determine the assigned weight for experience. Within the RFP, it was communicated to the vendors that experience would be worth a total of ten points maximum. The procedure, a mathematical formula, for assigning the weight or value (percentage) for experience was included in the evaluation committee procedures and is as follows:

Percentage Awarded Based on Review (%) X Points Possible (10) = Total Assigned Point Value

Observation:

Based on our recalculation, we determined that the SCC applied the proper weight to each vendor's experience.

Protesting Vendor's Allegation: SCC failed to give proper consideration to the Protesting Vendor's experience

Background:

It is important that the selected vendor have the necessary skill set to meet the scope of work outlined in the solicitation. Agencies will look to a vendor's experience for evidence that the vendor can meet the requirement of the solicitation. It is therefore necessary for the agency to evaluate the experience of the vendor. If an agency does not use a consistent process to verify experience, the agency may select a vendor that is not able to meet the necessary requirements outlined by the scope of work or disregard another a vendor that can. The SCC is accused of not properly evaluating the experience level of the Protesting Vendor and giving it the same level of consideration in comparison to the Awarded Vendor.

Procedure:

We reviewed the original RFP language to determine the extent to which it included instructions for evaluating the experience level of the individuals to be involved in the proposed implementation from each of the vendors, which highlighted the Project Management Professional (PMP) certification. We also reviewed the evaluation committee procedures for any further instructions to the review committee. We then obtained and reviewed the notes from each of the assigned reviewers at the SCC.

Observation:

We found that each of the reviewer's notes addressed the experience level of the individuals proposed to be included in the project on the part of each vendor, specifically their PMP certification. The SCC review committee utilized the same criteria in evaluating each of the proposals.

Protesting Vendor's Allegation: SCC failed to give proper weight to the Protesting Vendor price

Background:

The weighing of the price allows for the proposal to be evaluated based on its price, along with the other items being evaluated, to determine the proposal's overall value. While it is important that the proposal be evaluated on cost, it is also important to determine if what is being requested will satisfy the requirements listed in the solicitation, which is why the SCC chose not to make price the sole attribute used in awarding the contract.

For the purpose of the Commission 2.0 solicitation, price constituted twelve percent of the total possible score available. The SCC is accused of not giving the proper weight to the Protesting Vendor's price, which because it was the lowest price, was used in developing the pricing score for the Awarded Vendor's proposal.

Procedure:

We reviewed the original solicitation from the SCC to determine the extent to which it included criteria for scoring the proposals for price. The original solicitation from SCC contained a statement that price would be included in the scoring criteria. The evaluation committee procedures contained the following for scoring price:

$$\text{Lowest Submitted Price/All other Price} = \% \times \text{Total Points Possible (20)}$$

We then recalculated the points awarded for price, for all submissions, to determine if the points awarded were accurate. We determined that the two vendors selected for negotiations, the Protesting Vendor and the Awarded Vendor, had the two lowest points awarded for price, but had the highest overall points awarded.

We then reviewed the negotiation minutes as well as the responses to negotiation submitted by the two vendors, to determine if any changes were made to price. Based on post negotiation prices we then recalculated the pricing points for both the Protesting Vendor and the Awarded Vendor (the two submissions selected for negotiations) to determine if their respective changes in price would have changed the outcome of the award.

Observation:

We found that the SCC correctly awarded the maximum points possible for price to the Protesting Vendor. While the SCC used the lowest price from the two sets it accepted from the Awarded Vendor and included optional services in its calculation of points for the Protesting Vendor, none of these items, if considered in the calculation of points, individually, or collectively, would have materially impacted the SCC's choice of vendor.

Protesting Vendor's Allegation: SCC failed to give proper weight to the Protesting Vendor's solution suitability

Background:

The purpose of a RFP is for an agency to receive the best value when purchasing a good or service while not completely knowing the details by which it will obtain it. It is necessary then for the agency to provide a scope of work (scope) outlining the direction it wishes to proceed in order to meet the stated goal. It is the obligation of the vendor to give the agency a proposal with sufficient details which meets the needs outlined in the scope. In the case of the Commission 2.0 solicitation, the SCC stated it needed to improve the standardized business processes throughout the SCC as well as replace core systems. It further went on to give details in how the agency desired these changes to be implemented. It was then left to each vendor to provide their detailed plans within their proposals to meet the scope of work objectives and, if selected for negotiating, communicate the suitability of their solution during negotiations.

The SCC reviewed each of the proposals to determine which of them met the scope of work included in the RFP. For the purpose of the Commission 2.0 solicitation, Solution Suitability constituted 52 percent of the total possible score available. The SCC is accused of not giving proper weight to the suitability of the Protesting Vendor proposal as compared to that of the Awarded Vendor.

Procedure:

We reviewed the original solicitation from the SCC to determine the extent to which it included criteria for scoring the proposals. Based on our review, we determined the solicitation was not specific in outlining the solution suitability scoring criteria. We then reviewed the evaluation committee procedures and found the calculation for scoring suitability as:

Percentage Awarded Based on Review (%) X Total Points Possible (90) = Point Value Awarded

We then recalculated the total points for all submissions to determine that the total points awarded were mathematically correct for both the initial consensus scoring and the final consensus scoring.

Observation:

Based on our recalculation, we determined that the SCC correctly applied the correct weight to each vendor's solution suitability to derive a mathematically accurate score.

Protesting Vendor's Allegation: SCC failed to give proper consideration to the Protesting Vendor solution suitability

Background:

It is important for the soliciting agency to have a thorough understanding of the proposal submitted in order for them to determine if it meets the needs as outlined in the solicitation documents. It is incumbent on the vendor to facilitate this understanding by clearly and completely explaining the proposed solution. It is also incumbent on the soliciting agency to ask necessary questions as well to make the best effort to understand the proposed solution to verify that it does or does not provide the appropriate solution. The SCC is accused of not giving proper consideration to the Protesting Vendor's solution suitability.

Procedure:

We reviewed the initial consensus scoring for all initial vendors to determine if the SCC's consideration was consistent. We further reviewed the notes from all three evaluators to determine if a justification existed for the scoring given to each vendor. We then reviewed the negotiations for both the Protesting Vendor and the Awarded Vendor to determine if each was provided the same opportunity to communicate the suitability of their solution. Further, we separately interviewed each of the review committee members to determine if they had additional information, beyond what they documented in their notes contained within the official procurement file.

Observation:

We determined that, based on documents we reviewed and on the answers provided by the SCC's staff, the Awarded Vendor solution took the approach of designing a ground up system that while more expensive, was perceived by the review committee as having better potential suitability in fulfilling the scope included in the RFP. We further noted in the answers provided by the review committee, the Protesting Vendor's solution to the RFP scope was not a ground up solution but instead an adaptation of existing products and that, according to SCC's staff, the Protesting Vendor was unable to completely articulate their ability to deliver on the requirements of the RFP. We noted that since the SCC entered into negotiations with the Protesting Vendor as well as the Awarded Vendor, SCC gave both vendors the ability to communicate the suitability of their solution when compared to the requirements in the RFP. As a result of actively negotiating with both vendors, we determined that the SCC did give proper consideration to the suitability of each solution.

Protesting Vendor's Allegation: A conflict of interest exists between the Chief Administrative Officer (CAO) of the SCC and the Awarded Vendor

Background:

As a state officer, the need to be objective in the evaluation of offers is paramount to any other requirement. An officer must be free of conflicts in his or her decisions so that the public can have the confidence that they are acting in the best interest of the citizenry. The Virginia Conflict of Interest Act, Section 2.2-3100 of the Code of Virginia, explains it this way: "...our system of representative government is dependent in part upon ... its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests." The SCC is accused of allowing a procurement to occur and be awarded to a vendor where a conflict of interest possibly exists between the then CAO of the SCC and the Awarded Vendor.

Procedure:

We reviewed the Statement of Economic Interests (SOEI) forms for the then CAO of the SCC during for the years 2012, 2013, and 2014 for evidence that the CAO disclosed a conflict of interest with the Awarded Vendor.

Observation:

There is nothing in the SOEI forms filed by SCC's CAO with the Secretary of the Commonwealth to indicate there was a conflict of interest with the Awarded Vendor.

Protesting Vendor's Allegation: CAO exerted undue influence over the procurement process

Background:

The purpose of the Virginia Public Procurement Act is to ensure appropriate competition, which will result in the best value for the Commonwealth. It is paramount that the procurement process be conducted without influences that could cause others to question the validity of the transaction. The SCC is accused of allowing the process to be unduly influenced by the then CAO, who was familiar with the quality of the Awarded Vendor's work as a result of the CAO's prior employer, another state agency, contracting with the Awarded Vendor.

Procedure:

We reviewed the scoring for the two vendors selected for negotiation. Based on this review, we determined that the SCC changed the number of points allotted to each of the vendors after negotiations. We then interviewed all three of the individuals who comprised the review committee. Additionally, we inquired of the level of involvement in the procurement by the then CAO.

Observation:

We separately interviewed each member of the review committee and they asserted to us that 1) the changes made were strictly based on the results of the negotiations and that 2) there was no outside influence exerted.

While it is almost impossible to prove the existence of undue influence short of either the individual or those involved openly admitting to it, we did determine, to the best of our ability, that there did not appear to be undue influence exercised by the then CAO during the procurement of Commission 2.0. Additionally, based on the answers provided, the then CAO did not learn of the selected vendor until the review committee had selected the vendor and was making the recommendation to the SCC Commissioners. Finally, we learned that, while the CAO was considered to be a "hands-on" manager, this style of management did not rise to the level of "micro-managing" during the selection process.

OVERALL AND PRIOR OBSERVATIONS

Overall Observation on the Protesting Vendor's Allegations

Based on our review of the documentation provided to us by the SCC and inquiries made of the staff at the SCC, we did not find support for the allegations that would have materially affected the awarding of the contract. The only area of concern we noted related to the Awarded Vendors price; however, if the SCC had used the highest price provided by the Awarded Vendor and subtracted optional services from the Protesting Vendor's proposed price, it would not have changed the final ranking of the proposals or the subsequent intent to award the contract.

Prior Observations

The fiscal year 2012 audit of the SCC performed by the APA contained two findings related to procurement. One finding addressed procurement practices at the SCC and the second related finding addressed procurement workflow. In 2012 we recommended that the SCC establish a procurement policy which outlines the separation it is afforded as an independent agency while also adhering to procurement best practices. We reported in our fiscal year 2014 audit that while management has addressed the workflow finding, management has not yet fully established procurement policies and practices for the SCC. We recommend that the SCC complete its implementation of our prior recommendation.



Martha S. Mavredes, CPA
Auditor of Public Accounts

Commonwealth of Virginia

Auditor of Public Accounts

P.O. Box 1295
Richmond, Virginia 23218

August 14, 2015

The Honorable Terence R. McAuliffe
Governor of Virginia

The Honorable John C. Watkins
Chairman, Joint Legislative Audit
and Review Commission

We conducted a special review of procurement SCC-12-020-SCC, Commission 2.0, by the State Corporation Commission (SCC) at the request of the SCC and are pleased to submit our report entitled **Special Review of Procurement of Commission 2.0 at the State Corporation Commission**. We conducted this review by comparing the items outlined in the SCC's request for review letter dated December 1, 2014, to the Commonwealth of Virginia "Virginia Public Procurement Act," the "Agency Procurement and Surplus Property Manual" issued by the Department of General Services, and the procurement policy of the SCC and conducting interviews of selected staff at the SCC. This review was the result of the SCC lacking an administrative appeals process and requesting a special review. We believe that the evidence obtained provides a reasonable basis for our observations.

Exit Conference and Report Distribution

We discussed this report with the Commissioners of the SCC on July 29, 2015. The Commissioners' response to the observations identified in our report is included in the section titled "State Corporation Commission's Response to Review." We did not audit the Commissioners' response and, accordingly, we express no opinion on it.

This report is intended for the information and use of the SCC and is not suitable for any other purpose; however, it is a public record.

AUDITOR OF PUBLIC ACCOUNTS

GDS/clj

SCC REQUEST FOR REVIEW

APPENDIX A



December 1, 2014

VIA EMAIL ONLY

Ms. Martha S. Mavredes, CPA
Auditor of Public Accounts
101 N. 14th Street
PO Box 1295
Richmond, Virginia 23219

Re: Request for review of RFP SCC-12-020-SCC

Dear Ms. Mavredes:

The State Corporation Commission (SCC) respectfully requests a review by your office for compliance with applicable laws and best practices, as well as, allegations of fraud and conflicts of interest related to RFP SCC-12-020-SCC.

On August 14, 2012, the SCC issued an RFP, SCC-12-020-SCC, soliciting offers for Commission 2.0: Business Process Improvement and Core System Replacement. A Notice of Intent to Award a contract to CGI Technologies and Solutions was issued on October 14, 2014.

On October 23, 2014, a protest was received from PCC Technology Group, LLP (PCC). The protest included allegations that the SCC failed to give proper weight and or consideration to PCC's experience, solution suitability and price. It also contained anonymous allegations of fraud and conflicts of interest violations against Danny Payne, SCC Chief Administrative Officer. In accordance with the Virginia Public Procurement Act, the allegations were submitted for internal review and found to be without merit. The protest was denied in a decision letter dated November 3, 2014. You may recall that nearly identical anonymous allegations, which were determined by you to be unfounded, were made against Mr. Payne in conjunction with a prior procurement.

The SCC does not currently have an administrative appeals procedure authorized by §2.2-4365 of the Virginia Public Procurement Act. As a result, no further administrative review is available to PCC.

While the SCC has conducted a careful review of this procurement and found it to be in compliance with the applicable laws and best practices, and further has found no evidence to

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Request for APA audit
December 1, 2014
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support the allegations against Mr. Payne, we believe that an independent review by your office would be valuable.

Accordingly, the SCC requests an independent review by your office for compliance with applicable laws and best practices related to RFP SCC-12-020-SCC, as well as, of the allegations of fraud and conflicts of interest contained in the protest of PCC.

I am happy to review and discuss this request with you at your convenience. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith Williams Jagdmann". The signature is fluid and cursive, with the first name "Judith" being the most prominent.

Judith Williams Jagdmann
Chairman

APA RESPONSE LETTER

APPENDIX B



COMMONWEALTH of VIRGINIA

Auditor of Public Accounts

Martha S. Mavredes, CPA
Auditor of Public Accounts

P.O. Box 1295
Richmond, Virginia 23218
(804) 225-3350

December 3, 2014

VIA EMAIL ONLY

Judith Williams Jagdmann
Chairman
State Corporation Commission
P.O. Box 1197
Richmond, Virginia 23218-1197

Dear Judge Jagdmann,

I received your letter dated December 1, 2014, requesting a review of RFP SCC-12-020-SCC. Based on my review of your request and our subsequent phone call, my office is willing to perform a review of that procurement.

As I explained during our phone conversation, my staff are currently completing several deadline projects and the earliest I believe we can begin our review is January 12, 2015. Meanwhile, please gather the supporting documentation, including the procurement files and any correspondence with the initial vendor selected as well as any other vendors that provided proposals, so that as soon as staff become available they can begin planning and performing our review.

I have assigned George Strudgeon to be the Audit Director to lead this review. He will be in touch at the beginning of our work and keep you apprised of any findings we have during our review. At the conclusion of the review we will issue a letter to the Commission describing our review and results.

If you have any questions, please do not hesitate to contact George Strudgeon or me.

Sincerely,

A handwritten signature in cursive script that reads "Martha S. Mavredes".

Martha S. Mavredes

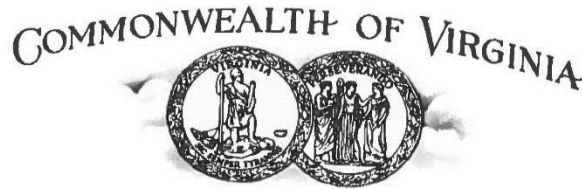
SCC RESPONSE TO PROTEST

APPENDIX C

MARK C. CHRISTIE
COMMISSIONER

JAMES C. DIMITRI
COMMISSIONER

JUDITH WILLIAMS JAGDMANN
COMMISSIONER



STATE CORPORATION COMMISSION

JOEL H. PECK
CLERK OF THE COMMISSION
P.O. BOX 1197
RICHMOND, VIRGINIA 23218-1197

November 3, 2014

Larry D. Harris, Esq.
Fox Rothschild LLP
1030 15th Street, N.W. Suite 380 East
Washington, DC 20005

Re: Request For Proposals SCC-12-020-SCC
Protest of PCC Technology Group, LLC

Dear Mr. Harris:

I write in response to your October 23, 2014, letter to the Virginia State Corporation Commission ("SCC"), on behalf of your client, PCC Technology Group, LLC ("PCC"). Such letter was submitted pursuant to Va. Code § 2.2-4360 of the Virginia Public Procurement Act. It is a protest of SCC's Notice of Intent to Award a contract to CGI Technologies and Solutions, Inc. ("CGI") as the winning offeror in response to Request for Proposals SCC-12-020-SCC (the "RFP").

The SCC's review of PCC's protest is conducted pursuant to the Virginia Public Procurement Act.¹ It is not unusual for multiple offerors to assert, at the end of a competitive procurement, that their own proposal should have been selected, and public bodies remain free to revise their decision at any time prior to award. The Virginia Public Procurement Act, however, requires public bodies to cancel or revise a proposed award only if "it is determined that the decision to award is arbitrary or capricious."²

The SCC's commitment to the integrity of the position of trust it holds in the Commonwealth of Virginia necessitates a comprehensive review of the protest and serious consideration of its content. Rather than focusing primarily on the relative merits of the competing proposals and whether there are any material errors in scoring, PCC's protest asserts that it should not have had to compete against its main competitor. PCC asserts this exemption from competition arises because it heard allegations of conflict of interest and bias expressed in communications it secretly maintained with individuals who worked at the SCC. Without

¹ Va. Code § 2.2-4360 (2014).

² Va. Code § 2.2-4360(B) (2014).

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commenting on the motives of such individuals, the propriety or legality of such secret communications, or PCC's failure promptly to bring these issues to the SCC's attention, I will state that such allegations of impropriety are false. My review will focus on the adequacy of the evaluation committee's consideration of the substantive merits of the competing proposals that were before the SCC.

As part of the consideration of PCC's protest, I have reviewed all information contained in the protest itself, as well as the attachments and exhibits included with the protest. I have also reviewed the SCC procurement file, including the Report in Support of the Recommendation of Award, which provides a detailed explanation of SCC's procurement process relating to the procurement at issue, the evaluation and scoring records for each of the members of the SCC's proposal evaluation committee, the transcripts of the negotiations with both PCC and CGI, and the written responses by vendors to specific evaluation committee questions about their respective proposals. I have also met with each member of the SCC's proposal evaluation committee.

After consideration of the issues raised in PCC's protest, and associated facts and circumstances, it has been determined that the SCC's decision to award was not "arbitrary or capricious,"³ but that such decision was based on the substantive superiority of the selected vendor's proposal, and that such award is consistent with the Virginia Public Procurement Act.⁴

Background

The RFP sought proposals for a computer hardware and software solution that would allow the various bureaus, divisions, and offices of the SCC to efficiently manage all SCC information, documents, and procedures. In broad overview, the SCC's operations include the following: The SCC Clerk's Office issues corporate charters and licenses (similar to functions performed in other states by a secretary of state). Other divisions of the SCC regulate power companies, telephone companies, and other public services companies (similar to functions performed in other states by a public utilities commission). The SCC also has: a Bureau of Financial Institutions, which regulates banks, lenders, and other financial entities; a Bureau of Insurance, which regulates insurance companies; and a Division of Securities and Retail Franchising, which regulates stock brokers, investment advisers, and registration of franchises and trademarks.

PCC offered to provide a modified off-the-shelf product which it had sold to Vermont and Connecticut's secretary-of-state offices, thus fitting well with the needs of the SCC's Clerk's Office. PCC further offered to modify this product, where possible, to handle information and document management needs of SCC's many other bureaus and offices, and where such configuration was not possible, PCC offered to provide licenses to various other third-party products in an effort to meet the RFP requirements for the remainder of the SCC.

³ *Id.*

⁴ Va. Code § 2.2-4300, et seq.

In contrast, the winning vendor offered to custom-develop a single, integrated solution that would meet the requirements of the RFP for all SCC Offices, Bureaus, and Divisions.

Evaluation and Scoring Process

Overview of Process

The use of the competitive negotiation process was documented and approved in advance of the procurement as evidenced in the RFP Justification and Approval to Issue. The RFP contained extensive explanations of the SCC's current systems, the functionality required by the solution being sought, including the requirements for the solution to integrate into the SCC's enterprise systems. The RFP further set out the specific criteria upon which the SCC would evaluate each proposal. The weight factors for the evaluation criteria were published by the SCC just prior to the close of the time for submission of proposals.

The SCC established an evaluation committee⁵ of three individuals who independently evaluated and scored each proposal for all criteria but financial credibility. The members of the evaluation committee met to discuss their individual scoring and to produce a first consensus score. The offerors with the two highest overall scores were selected to move to negotiations with the evaluation committee. Based on the information learned during the negotiation process, the offerors' proposals were then rescored in the same manner identified above.

Each member of the evaluation committee confirmed that no member(s) of the SCC management attempted to influence the process. In fact, the identity of all offerors was not disclosed to senior management until after a recommendation of award was made by the evaluation committee.

Negotiations

The negotiation process was comparable for both finalists. Prior to negotiations, both PCC and CGI were provided an opportunity to identify points each wished to address and were provided a copy of the specific points for each offeror that the evaluation committee intended to cover. In addition, any general information that one offeror requested to better prepare their responses to negotiation topics was also provided to the other.

Differences in the negotiations related to the difference in the nature of the two proposals. Whereas PCC proposed to modify an off-the-shelf solution to fit SCC's needs, CGI proposed a more custom designed solution. Thus, it appears clear from the transcripts and written responses that on one hand PCC limited itself to attempting to explain how its off-the-shelf solution, originally designed primarily for the kind of work that constitutes the bulk of the work done by the SCC's Clerk's Information System, could be modified to meet the needs of the remaining functions of the SCC, the bulk of which were not adequately suited to the CRD Framework at the

⁵ Deborah Ellenberg, Chief Hearing Examiner, Office of Hearing Examiners, chaired the committee, with Janet LaFleur, Chief Information Officer, IT Division, and Emily Wingfield, Deputy Clerk, Office of the Clerk, as committee members.

heart of the proposal. In contrast, CGI's approach allowed for a discussion about how CGI would design specific aspects of its solution and the scope of implementation.

The evaluation committee identified weaknesses in each offeror's proposal. As is evident from the transcript, the evaluation committee worked to help PCC respond to the SCC's concerns that the CRD Framework did not fully address required document management or data availability functionality outside the Clerk's Information System. As addressed in greater detail below, PCC's response to this concern was to offer to provide a maximum of one hundred licenses to a third-party product, Documentum, at no additional charge.

The SCC established and consistently followed an evaluation, negotiation and scoring process that was based on the relative merits of the proposals and was not arbitrary or capricious.

Revisiting PCC Scoring

In response to PCC's protest, the evaluation committee revisited the scoring on issues raised by PCC to ensure nothing had been omitted or scored incorrectly. Neither the evaluation committee nor I found any defects in the scoring. PCC raised specific concerns regarding the adequacy of the SCC's consideration of PCC's proposal in the areas of price, experience, and solution suitability.

Price

Price was one such evaluation criterion. Price was afforded a weight of 20 points out of 170 points, and was scored in accordance with a formula established for use in the Commonwealth. The formula is as follows: the lowest price shall be scored the maximum number of evaluation points for price. The lowest price is then in turn divided by each of the higher offerors' proposed price. The quotient is then multiplied by the points assigned for price to determine the evaluation points to be assigned to each higher price proposal.

Initial prices ranged from \$4,460,142 to \$26,486,175. PCC's final price was the second highest at \$22,063,253. PCC's price was the lowest of the two proposals considered in the final consensus and therefore received the full 20 points at that time.

PCC complained that price was not appropriately considered, but as explained above, the points awarded for price were dictated by a formula, and PCC received the maximum points possible for the price criterion of the scoring.⁶

Experience

As to the issue of PCC's relevant experience, "Quality of experience of individual committee members (Offeror and Sub-Contractors)" was an evaluation criterion and was weighted 10 out of 170 points. Information provided by the offerors was evaluated and scored accordingly. PCC received a score of 9.1667 and CGI received a score of 9.6667. The information provided by PCC indicates that PCC's applicable experience encompassed business

⁶ It appears from PCC's protest that it may be arguing that the price criterion itself should have been given more weight. Such a claim is expressly prohibited by Va. Code § 2.2-4360(A).

entity registration/ UCC filings (in 2 small states, Vermont and Connecticut, and some work in Georgia), which is comparable to the work performed in SCC's Clerk's Office on a smaller scale, as well as voter registry, and trademark registry applications. PCC did not establish experience in a larger enterprise wide modernization effort comparable to that sought by the SCC. PCC's subcontractors, North Highland and ECM, experiences were also considered in the scoring. CGI did cite prior experience in wide modernization efforts.

There is no evidence that the evaluation committee's scoring of PCC's experience was arbitrary or capricious.

Solution Suitability

Regarding the scoring of PCC's proposal for solution suitability, the evaluation committee followed the written procedures established in advance of the proposal review process (the "Procedures"). The Procedures provide for changes in scores for the defined criteria upward or downward stating that "[t]he evaluation committee members will re-score the proposals based on any improvements and/or information learned during negotiations and formal presentations . . . The 2nd and final consensus evaluation form will be documented to reflect any change of scores from the first consensus evaluation forms to determine the top proposal to be recommended for an award."⁷

It is evident from the transcript of the negotiations, and confirmed by discussions with the evaluation committee in connection with PCC's protest, that although the evaluation committee initially believed that the PCC proposal provided a reasonable solution for enterprise-wide document management and data availability, it was discovered, during the September 19, 2013 negotiations, that the CRD Framework coupled with the Documentum Platform, the foundation of PCC's proposed solution, was most appropriate for work flows, data entry, and document management of the kind performed primarily by the SCC's Clerk's Office. While that type of work constitutes the bulk of the work performed regularly by the SCC's Clerk's Office in connection with the Clerk's Information System, only about 15% of the SCC employees enterprise-wide exclusively perform such work. Indeed, the bulk of the work performed by the SCC outside the Clerk's Office does not fit with the type of work contemplated by PCC for the CRD Framework. Once the evaluation committee helped PCC understand that PCC's initial proposal failed to fully satisfy the business requirements of enterprise-wide document management and data availability, PCC advised that it would offer stand-alone Documentum licenses in addition to the Documentum Platform licenses in the proposal.⁸

Subsequent questions were asked to fully explore the user experience with the revised PCC solution. It was further discovered that there are numerous Documentum licenses (MyDocumentum for Outlook, MyDocumentum for Desktop, Documentum Platform used in conjunction with CRD Framework, and D2), and that some SCC employees might be required to have several Documentum licenses and applications on their desktops depending on the type of

⁷ Procedures at p.11.

⁸ It is noteworthy that PCC relied heavily upon the CRD Framework as a basis for its compliance with the RFP requirements.

work performed. The complexity of using and supporting multiple license types was an evident source of concern to the evaluation committee. As the evaluation committee further explored the several different ways in which PCC proposed for users to access the Documentum repository, the evaluation committee concluded that the revised PCC solution did not efficiently and sufficiently meet the enterprise-wide aspects of the SCC's requirements.

Similarly, PCC stated that its proposed solution for data availability through the CRD Framework would provide a solution for every division. During negotiations, PCC did not delineate how the solution would be populated with data outside of the Clerk's Information System replacement effort. While it agreed to comply with the SCC data availability requirements and stated that the CRD Framework has full capability to integrate and provide data from any number of sources, PCC did not provide substantive information about whether it would actually integrate with other data sources or how data related to non-Clerk's Information System documents created, edited and finalized outside of the CRD Framework would be stored and accessed.⁹

PCC clarified that for all SCC systems other than the Clerk's Information System, it proposed analysis "on the best approach for automation of existing data" and, if possible, the CRD Framework's out-of-the box functionality "will be applied to support the replacement or augmentation of these legacy systems. Any gaps will be identified that will be subject to change control." Therefore, the achievement of data availability would be wholly dependent on future analysis and the extent to which any existing systems are found to be compatible with the CRD Framework.

The evaluation committee had concluded that PCC did not demonstrate that it has an adequate plan for implementing an enterprise-wide document management and data availability solution, which ultimately had an adverse effect on PCC's solution suitability score.

PCC's protest fails to point to facts or other information that were not adequately considered by the evaluation committee's changes to PCC's solution suitability score. In fact, the protest itself further emphasizes the disconnect between PCC's proposal and the enterprise-wide needs of the SCC. This disconnect is further evidenced by PCC's written responses to the evaluation committee questions. PCC simply provided repetitive responses to questions that sought specific explanations as to how PCC's CRD Framework would address the SCC's needs beyond the replacement of the Clerk's Information System.

PCC's Protest Table Entries

I have reviewed each of the items identified in the table included with PCC's protest, and discussed them in detail with the evaluation committee. In general, the responses provided in the table merely point to instances in which PCC provided a response, but do not address the

⁹ It appears from PCC's proposal that the data availability requirements would be satisfied by work performed by PCC's subcontractor, Data Concepts. PCC brought its other two subcontractors with it to negotiations but did not bring a representative from Data Concepts to negotiations. PCC's inability to address these issues for the evaluation committee created a significant amount of uncertainty for the evaluation committee.

adequacy of that response. It is also noteworthy that all of the references to PCC responses in the table were to agreements made in the morning session of the negotiations. Later in the negotiation session PCC was helped by the evaluation committee to understand that much of the SCC's enterprise-wide needs for the project at issue would not run through PCC's CRD Framework.

Below are more specific responses to the issues raised in the table included in PCC's protest:

- *First and Second Table Entries*

Requirement BP-06 of the RFP requires the Contractor to "develop and implement any new system(s) as necessary and agreed-upon to meet the project objectives." The transcript reference (34-40) was from the morning session when the evaluation committee was under the mistaken understanding that CRD Framework was to be the foundation of the solution for the SCC enterprise-wide. Thereafter, beginning on page 95 of the transcript, PCC and the evaluation committee came to the realization that the CRD Framework would be the foundational element of the solution for all users who performed transactional work – primarily the Clerk's Office - but would not be effective for use enterprise-wide. Therefore any systems required for non-Clerk's Information System users would not be developed and implemented through the CRD Framework, but from some other undefined process.

- *Third, Fourth, and Fifth Table Entries*

In addition to the issues identified above, PCC did not fully respond to questions asked subsequent to the September 19, 2013 session on data availability outside the CRD Framework. Moreover, in response to the contention that CGI must have been offered specifics, the evaluation committee responded to questions posed by each offeror. Beyond that provided by the SCC, PCC did not ask for any additional information that it may have required to make any assessments.

- *Sixth and Seventh Table Entries*

In addition to the information above, the evaluation committee recognized that PCC ultimately provided a solution to these criteria, but the newly proposed solution by PCC requiring users to acquire multiple licenses and use multiple applications for document management and data access outside the CRD Framework was not satisfactory to the evaluation committee because of the inefficiencies and complexities inherent to such a solution.

It appears that the central issue is that PCC proposed a solution that, once explored and evaluated in detail during the negotiation process, did not, in fact, meet the requirements of the SCC RFP. PCC's revised solution made during the negotiation process to address the majority of the required functionality outside the Clerk's Information System was simply not sufficiently well-developed to address the requirements.

Accordingly, there is no evidence that the evaluation committee arbitrarily or capriciously rescored the solution suitability of PCC's proposal.

Conflict of Interest and Related Allegations

PCC's protest asserts that there was a conflict of interest that should have required a certain individual to recuse himself under Va. Code § 2.2-3112(A)(1). That section relates to individuals who have a "personal interest in a transaction" as defined in § 2.2-3101 of the State and Local Government Conflict of Interests Act. PCC's protest merely asserts that Danny Payne, Chief Administrative Officer, is a friend of a former officer of the selected vendor, but fails to allege the existence of any financial connections, which are necessary to create a

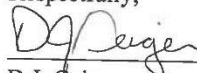
"personal interest in a transaction." Moreover PCC's allegation pertains to an employee, Mr. Payne, who was not on the evaluation committee and who has no supervisory role over two of the three individuals on the evaluation committee, including the chair. PCC's protest asserts as fact false allegations¹⁰ heard from an "anonymous insider."

After careful review and consideration of all the relevant information, including direct conversations with each of the members of the evaluation committee, there is no evidence to support PCC's allegations regarding conflict of interest or impropriety relating to this procurement. There is no evidence that Mr. Payne attempted to influence any of the three evaluation committee members. As indicated, PCC's allegations that Mr. Payne was friends with the former officer of a vendor do not have any bearing on the Conflict of Interest statute PCC cites in its protest. Further, there is no basis for the assertion that because a vendor has previously been awarded a contract to do work for an agency, then such vendor is precluded from doing any work in the future. There is no evidence that any SCC employee had any improper contact with CGI.¹¹ Nothing in PCC's attempts to use a past media story about a different procurement supports its notion that the vendor and agency targeted by the media account should be precluded from transacting business in the future.¹²

Conclusion

The SCC's decision to award a contract for the RFP complies with applicable Virginia law, was based on the substantive merits of the respective proposals, and was not arbitrary or capricious. Accordingly, PCC's protest is denied.

Respectfully,



D.J. Geiger
Administrative Counsel to
Virginia State Corporation Commission

¹⁰ For example, one text message attached to the protest alleges that Mr. Payne convinced the committee to change a pricing score when such score is based on a strict mathematical formula which resulted in PCC's score going up relative to CGI's score during negotiations.

¹¹ Based on information in the protest letter, the same apparently cannot be said for PCC.

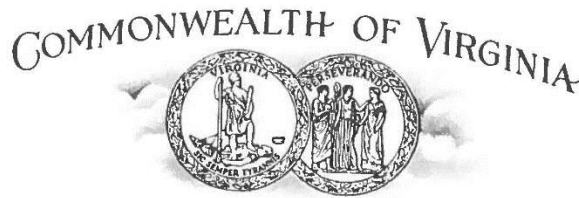
¹² While the prior procurement has no relevance to a comparison of the relative merits of the two proposals for this RFP, I note that the Auditor of Public Accounts examined the prior procurement after the media story and "did not find any evidence to substantiate the allegations of fraud or abuse." See Report on Audit for the Year Ended June 30, 2012, Audit Summary, Auditor of Public Accounts, Commonwealth of Virginia.

STATE CORPORATION'S COMMISSION RESPONSE TO REVIEW

MARK C. CHRISTIE
COMMISSIONER

JAMES C. DIMITRI
COMMISSIONER

JUDITH WILLIAMS JAGDMANN
COMMISSIONER



JOEL H. PECK
CLERK OF THE COMMISSION
P.O. BOX 1197
RICHMOND, VIRGINIA 23218-1197

STATE CORPORATION COMMISSION

August 14, 2015

Martha S. Mavredes, CPA
Auditor of Public Accounts
101 North 14th Street
P.O. Box 1295
Richmond, Virginia 23219

Re: Special Review of RFP SCC-12-020-SCC (Commission 2.0)

Dear Ms. Mavredes:

We have received the final report from your Special Review of the State Corporation Commission's procurement known as the Commission 2.0 project, specifically RFP SCC-12-020-SCC. We appreciate the extensive time and effort you and your staff put into this special review.

Sincerely,

Mark C. Christie
Chairman

James C. Dimitri
Commissioner

Judith Williams Jagdmann
Commissioner

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STATE CORPORATION COMMISSION OFFICIALS

As of June 30, 2014

COMMISSIONERS

Judith Williams Jagdmann, Chairman
Mark C. Christie
James C. Dimitri

CHIEF ADMINISTRATIVE OFFICER

Danny M. Payne