

State Protest Committee Meeting No. 14
Summary of Decision and Minutes
Protest of RFP # 34901-01225
Credential Production, Issuance, and Management Solution

The Central Procurement Office issued RFP # 34901-01225 for Credential Production, Issuance, and Management Solution (“the RFP”) on December 14, 2020. The State completed the evaluations and provided its Notice of Intent to Award the contract to Thales DIS (“Thales”) on July 26, 2021. On August 2, 2021, Idemia USA (“Idemia”) filed a protest of that determination and the required bond amount with Chief Procurement Officer Michael Perry (“CPO”).

On September 20, 2021, the CPO issued his decision rejecting the cost responses, based upon error in the RFP and confusion among the proposers, and remanded the matter to the Department of Safety and Homeland Security (“Safety”) to reissue the cost proposals. Thales appealed the CPO’s decision to the State Protest Committee on September 7, 2021. Position statements were submitted by Thales, the CPO, and Idemia.

The State Protest Committee convened on February 2, 2022, to hear Thales’s appeal. The issues alleged by Thales in its September 7, 2021, appeal to the Committee and its Position Statement filed on January 21, 2022, included the following:

- (1) The CPO’s decision to issue a Final Determination on September 20, 2021, was in error, as it was made without receiving a position statement from Safety and without allowing the parties to participate in the informal hearing that had been previously scheduled.
- (2) The CPO’s Final Determination is substantively flawed. The State acted reasonably and within its discretion when selecting Thales for award. Moreover, when presented with a case of potentially ambiguous solicitation clauses, the CPO’s role is to determine whether Safety’s decision was arbitrary and capricious, not to substitute his own reading of the RFP’s provisions for that of Safety.
- (3) A pre-award protest should have been filed by Idemia.
- (4) The solicitation unambiguously required respondents to price iPads in cost proposals.
- (5) Even if the RFP was ambiguous, Thales offered the more reasonable interpretation of the solicitation requirements and one with which Safety agreed.
- (6) The CPO’s remedy is competitively unfair and prejudicial.

The State Protest Committee first addressed the protest bond which had been filed by Idemia as the protesting party of the underlying protest to the CPO pursuant to Tenn. Code Ann. § 12-3-514. The State Protest Committee found that Idemia did not pursue the protest beyond the CPO’s decision on

September 7, 2021, and there was no reason to continue to hold the Protest Bond. The State Protest Committee unanimously voted to return the protest bond to Idemia.

After discussion and argument by counsel for each of Thales, the CPO, Safety, and Idemia, the State Protest Committee unanimously upheld the decision of the CPO denying Thales's appeal based on the written position statements and oral presentations by counsel for each of the parties at the hearing as follows:

- (1) The CPO was within his authority to cancel, in whole or in part, the RFP.
- (2) There was no procedural error in the CPO's cancellation of the cost proposals.
- (3) There was no issue with the protest timing of any of the parties in this matter.
- (4) The CPO could render his decision without the hearing process.
- (5) The CPO did consult with Safety as required by statute, and Safety confirmed the consultation as well as Safety's intent for technical responses regarding iPads and kiosks.
- (6) Based on the timing of the terms of the current contracts, the needed ramp-up time for a new contract, and the impact to the public and citizens, the CPO acted within his authority and in the best interest of the State. Further, the CPO acted reasonably and within his authority to cancel the cost proposals, rather than the entire procurement, to direct Safety to clarify its intent and needs regarding equipment, and to reissue only the cost proposals.