



COMMONWEALTH of VIRGINIA
STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA
James Monroe Building, 101 North Fourteenth Street, Richmond, VA 23219

Peter Blake
Director

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December 18, 2020

VIA ELECTRONIC MAIL & U.S. MAIL

Michael N. Pocalyko
Special Investigations
459 Carlisle Drive, Suite 8
Herndon, Virginia 20170-5607

**Re: Request for Proposal (RFP) Number: 245-110420, Title: Marching
Toward Inclusive Excellence: An Equity Audit and Investigation of Virginia
Military Institute**

Dear Mr. Pocalyko:

The State Council of Higher Education in Virginia (SCHEV or Council) was in receipt of your December 10, 2020, letter of protest regarding the above referenced request for proposal. This letter responds to your protest of SCHEV's Notice of Intent to Award. For the reasons stated below, your protest is denied.

In your letter, you challenged whether the selected vendor, Barnes and Thornburg, LLP, an Indiana based law firm, was selected inappropriately. More specifically, you alleged that:

- 1) Barnes and Thornburg, LLP, was not registered as a foreign corporation in the Commonwealth of Virginia pursuant to Virginia Code §2.2-4311.2(B);
- 2) Barnes and Thornburg does not have an office or presence in the Commonwealth of Virginia; and
- 3) Barnes and Thornburg is not registered as a foreign professional law corporation in the Virginia State Bar in accordance with Paragraph 14 of par 6, § IV of the Rules of Court.

In addition, you referenced that the one of the managing partners of the firm had an affiliation with the Trump/Pence campaign that should have disqualified it from consideration. Finally, your letter implied that in making the selection that the Council failed in its due diligence.

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Based on review of the procurement documents and consultation with Council staff, we have concluded the following:

- 1) Barnes and Thornburg, LLP, is a foreign corporation that is registered with the State Corporation Commission and has been since November 25, 2020. The firm, in submitting its proposal, complied with the Virginia Public Procurement Act, which allows bidders and offerors to seek approval to do business with the Commonwealth during the pending of a request for proposal. The firm's approval by the Virginia State Corporation Commission was issued prior to the negotiations period of the RFP;
- 2) The RFP did not require offerors to have an office located in the Commonwealth. Barnes and Thornburg is a national law firm with 15 of its attorneys validly and actively licensed in the Commonwealth of Virginia. Thus, the firm has sufficient contacts with the Commonwealth;
- 3) The firm is not registered as a foreign professional law corporation with the Virginia State Bar in accordance with Paragraph 14 of par 6, § IV of the Rules of Court; however, such a status is not relevant to this RFP as the offerors for this particular proposal are not required to practice law in the Commonwealth and will be prohibited from providing legal advice to SCHEV.

Additionally, the Council has taken great effort in reviewing the submitted documents of all offerors, including your submission. The Council does not doubt your professionalism, your experience or your capabilities; however, the Council has selected another offeror for services under this RFP that the Council deemed more suited for this contract and that has relevant and vast experience in the area of higher education.

As for your concern regarding the political affiliation of one of the firm's managing partner's, the Council can only offer that political affiliation is not relevant to this RFP, and is not a valid basis for a protest under the Virginia Public Procurement Act. Finally, the due diligence exercised in the selection of the firm fully considered the interests of the Commonwealth and SCHEV's unique mission and duties for higher education in Virginia.

Accordingly, your protest is hereby denied.

Thank you for your participation in this procurement.

Respectfully,


Peter Blake

cc: Jennifer Brooks, Procurement and Fiscal Specialist, SCHEV
Keven B. Patchett, Section Chief, OAG, Technology and Procurement Law Section
Ramona L. Taylor, Sr. Assistant Attorney General, OAG, Education Section

SPECIAL INVESTIGATIONS

VA DCJS 11-8775

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Attn: Jennifer Brooks, Procurement and Fiscal Specialist
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**LETTER OF PROTEST
MARCHING TOWARD INCLUSIVE EXCELLENCE:
AN EQUITY AUDIT AND INVESTIGATION OF
VIRGINIA MILITARY INSTITUTE**

Responding to December 7, 2020 Notice of Intent to Award RFP Number 245-110420

December 10, 2020 - 4:00 pm EST

On December 7, 2020, the State Council on Higher Education for Virginia (SCHEV) declared its intent to contract RFP 245-110420, "Marching Toward Inclusive Excellence: An Equity Audit and Investigation of Virginia Military Institute" to Barnes & Thornburg LLP, an Indiana law firm that is not registered as a foreign corporation in the Commonwealth of Virginia pursuant to Code of Virginia § 2.2-4311.2(B); has no office or presence in the Commonwealth of Virginia; and is not registered as a foreign professional law corporation in the Virginia State Bar in accordance with Paragraph 14 of Part 6, § IV of the Rules of Court.*

Special Investigations Limited Company, a Virginia investigative firm (SCC S485639-1, VA DCJS 11-8775, DSBSD SwAM 725245) and an offeror to RFP 245-110420, by this letter, and in compliance with Code of Virginia §§ 2.2-4342 and 2.2-4360(A) **protests the intent of SCHEV to issue the contract to Barnes & Thornburg LLP.**

The persons whom we proposed on November 17, 2020 comprise the **most qualified, extraordinary, nationally respected, and diverse** body of professionals— assembled with deep care and foresight to serve the citizens of the Commonwealth of Virginia.

We are confident that if the elected leadership and the public at large in the Commonwealth were able to compare the offer from our firm in direct contrast to the offer from Barnes & Thornburg LLP, a **very different result would obtain: We would be the contractor.**

It is our civic purpose, lodging this protest, to reach that result before this contract is issued.

Special Investigations Limited Company is positioned to serve this contract without an inherent and unresolvable bias that we perceive in the intended selection of Barnes & Thornburg LLP.

Our culture is audit and inquiry, with the responsibility to the public trust of inspectors general— not litigation and advocacy, with the intended shield of law firm privilege.

* The law firm's non-registration was confirmed by the Virginia State Bar on December 10, 2020 at 12:56 pm EST.

The SCHEV Notice of Intent to Award on December 7, 2020 states that "Records for this procurement are now available for inspection by any offeror on this RFP."

As an offeror, we hereby request copies of or electronic access to all such records.

We request the opportunity to present our firm, our investigation leadership, and our methodology – virtually – to the Council at Large, in advance of a final contracting decision.

We further request that no awarding of this contract be made until our protest is heard – even if, as should be apparent, that action will delay the intended timeline for production of investigative results as outlined in RFP 245-110420.

We are the independent and unbiased body required by these circumstances.

We submit that SCHEV's tentative choice of this Indiana law firm is inappropriate and – *inter alia*, because the law firm is unregistered – violates proper Virginia open-bid contracting and does not meet the "Special Terms and Conditions" of RFP 245-110420, § IX.M (page 22 of 28).

We also submit that the law firm's managing partner's national leadership and advocacy in the 2020 Trump-Pence campaign (and the election aftermath) should have immediately disqualified Barnes & Thornburg LLP as a Virginia government contractor when SCHEV conducted its due diligence. If the contract is actually awarded to Barnes & Thornburg LLP, SCHEV's Council Members will of course have to answer to the Commonwealth's elected leadership and to the public for this choice.

We state our good-faith belief that **Barnes & Thornburg LLP is unqualified to investigate VMI.**

We offer the impartiality, independence, and integrity that VMI and Virginia deserve.

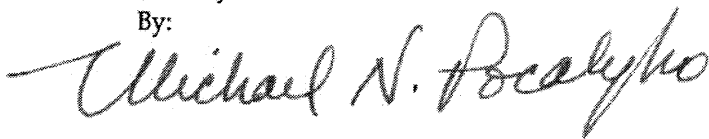
And we thank you sincerely for your continued consideration.

We will appreciate your response.

Respectfully submitted,

Special Investigations Limited Company
d/b/a Special Investigations
VA DCJS 11-8775

By:



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