STATE OF FLORIDA, STATE UNIVERSITY SYSTEM
UNIVERSITY OF NORTH FLORIDA

SCHLAGE LOCK COMPANY, LLC,

Petitioner,

vs.

STATE OF FLORIDA, STATE UNIVERSITY SYSTEM, UNIVERSITY OF NORTH FLORIDA,

Respondent.

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FORMAL WRITTEN BID PROTEST AND
PETITION FOR FORMAL ADMINISTRATIVE HEARING

Schlage Lock Company, LLC ("Schlage"), through its undersigned counsel, files this Formal Written Bid Protest and Petition for Formal Administrative Hearing pursuant to Rule 13.0020R, and section 120.57(3), Florida Statutes, and Chapters 28-106 and 28-110, Florida Administrative Code, and challenging the agency action of the University of North Florida (the “University”), and states:

NATURE OF THE PROCEEDINGS

1. This is a competitive procurement protest proceeding brought pursuant to Rule 13.0020R, and section 120.57(3), Florida Statutes, as to the University’s solicitation seeking proposals from qualified access control integration firms to provide an integrated solution for implementing an access control security system for the University’s student resident buildings. The University’s solicitation was issued as an Invitation to Negotiate (“ITN”) entitled “Access Control Security System,” ITN No. 14-15.
2. The focal point of this protest proceeding is that after issuing the initial ITN, the University altered the original ITN specifications and provisions through issuance of an Addendum No. 2 that arbitrarily and capriciously restricts competition, and improperly restricts the ability of venders to provide responsive proposals, and authorizes only the products of a single manufacturer for the security locking systems that form the bulk of the security system being sought.

3. Schlage challenges the proposed action as it has prevented Schlage from competing on equal terms due to the University’s illegal, arbitrary, and capricious actions and failure to follow the governing statutes, agency rules or policies, and the solicitation specifications. The proposed agency action is clearly erroneous, contrary to competition, arbitrary and capricious.

THE CHALLENGED AGENCY ACTION

4. By this Protest and Petition, Schlage challenges the University’s Addendum No. 2 to ITN 14-15, which is anti-competitive, and evinces favoritism towards one vendor and manufacturer’s product line to the exclusion of other equal and superior lock systems, including the lock system manufactured and distributed by Schlage.

THE PARTIES

5. Petitioner Schlage is a limited liability company with a principal address of 11819 North Pennsylvania Street, Carmel, Indiana, 46032. For purposes of this proceeding, Schlage’s address, phone number, and email are that of undersigned counsel, and all further notices, pleadings, orders, and other communications should be made through undersigned counsel.

6. Schlage is a subsidiary of Allegion, a publicly traded company and a world leader in the access control and security industry. Allegion’s access control security systems have been
adopted and implemented in universities and colleges across the United States to provide state of the art electronic access control to university residences and dormitories. The Schlage locks and access control systems are state of the art and accepted nationally and globally for university application.

7. Respondent University is a part of the State University System, established pursuant to Section 7(d), Art. IX, Florida Constitution. For purposes of this proceeding, the University is a state agency as defined in section 120.52, Florida Statutes.

**PROCEDURAL AND BASIC FACTUAL BACKGROUND**

8. On January 21, 2014, the University issued the ITN for proposals to provide a solution for access control security for university residences. There were two addenda to the ITN based upon a Question and Answer period during which potential proposers requested clarification of various provisions of the ITN.

9. Schlage, through its representatives, attended the mandatory pre-proposal conference and also attended at least two additional site visits in preparation for offering its solution for the access control security system requested through the ITN.

10. In the initial ITN at Attachment A, the University identified specifications for the various hardware and software components of the security system to be offered. Based upon review of the ITN, Schlage determined that it could provide a fully compliant security solution.

11. On Page 281300-22 of the initial ITN, the ITN specifies requirements for “Wireless IP Enabled Access Control Mortise Locks.” Importantly, this provision provides in pertinent part as follows: “UNF (University) has selected the IEEE 802.11 (2.4 GHz) mortise locks as the basis of design and the preferred product. **Other wireless mortise locks are**
acceptable and will be evaluated if the proposed lock is comparable to the specifications listed below.” (emphasis added)

12. Subsequently, on or about February 24, 2014, the University issued Addendum No. 2 to the ITN which deleted the ability to offer a comparable product and effectively transformed the ITN into a sole source contract for the lock component of the security system, which constitutes the vast majority of the products and services requested in the ITN.

13. Specifically, Addendum No. 2 provided that: “The specification calls for any wireless lock solution to use 802.11 compliant hardware.” The ability to offer other comparable wireless lock solutions was thus effectively and arbitrarily stripped from the ITN transforming it into a sole source contract, exhibiting favoritism to a particular manufacturer and vendor.

NOTICE OF DECISION AND TIMELY PROTEST: STAY OF PROCEEDINGS

14. Schlage received notice of Addendum No. 2 on or about February 24, and filed its Notice of Intent to Protest within 72 hours as required by University regulation and the terms of the ITN.

15. In accordance with Rule 13.0020R, and section 120.57(3), Florida Statutes, Schlage timely filed its Notice of Intent to Protest the specifications as revised through Addendum No. 2 to the ITN.

16. This Formal Written Protest is timely filed, and upon filing of this protest, pursuant to Rule 15.0020R, and section 120.57(3), Florida Statutes, the University should immediately stop the solicitation process until the subject of this Protest is resolved.
SUBSTANTIAL ADVERSE IMPACT AND STANDING

17. Schlage engages in the manufacture and design of access control security systems as described above. Schlage and its distributors regularly enter into contracts with entities seeking access control security systems such as the system being sought by the University.

18. Schlage has expended substantial time and resources preparing in order to respond to the University’s ITN.

19. Schlage’s rights will be substantially and adversely affected by the University’s erroneous, arbitrary, capricious, illegal, anti-competitive and unfair actions regarding the ITN, including specifically the issuance of Addendum No. 2 which effectively limited the responsive wireless lock solutions to only those that use “802.11 compliant hardware.”

20. Schlage stands to lose the ability to provide a responsive proposal to the ITN issued by the University, and thereby suffer financial losses.

DISPUTED ISSUES OF MATERIAL FACT

21. Schlage contends that the University’s actions in limiting the acceptable wireless lock solution to only “802.11” hardware is arbitrary, capricious, contrary to competition, contrary to public policy, not in compliance with the specifications, criteria, and requirements of the initial ITN, not in compliance with applicable rules, and otherwise clearly erroneous and fails to comply with applicable Florida law.

22. The following particular and specific disputed issues have been identified as of the date of this Protest and Petition. Schlage reserves the right to amend and submit additional evidence and issues as such become apparent during the course of its investigation and through the discovery process. Disputed issues of material fact include the following:
a) Whether the initial ITN specifically recognized and authorized proposals that would use wireless lock solutions that were comparable to the specifications relating to use of a “802.11” frequency for wireless communications;

b) Whether the University changed its specifications in issuing Addendum No. 2 by requiring “any wireless lock solution to use 802.11 compliant hardware” without the ability to offer a comparable or superior solution;

c) Whether the Federal Communication Commission has promulgated regulations for unlicensed communication equipment that includes allowance of three “ISM” bands for unlicensed communication, including the following: 902-928 MHz; 2.4 to 2.4835 GHz (used in 802.11 products); and 5.725 to 5.875 MHz;

d) Whether 802.11 wireless locks are manufactured and produced by only one company and its subsidiaries (ASSA Abloy);

e) Whether wireless lock products using the other FCC authorized bands for wireless communication are comparable and in many ways superior to 802.11 communication;

f) Whether a wireless lock system using the 915 MHz band (approved by the FCC) is superior to 802.11 in terms of real-time operation, extended range, extended battery life, and is less susceptible to noise;

g) Whether competition would be best served by allowing for wireless lock solutions that use bands other than the bands used by 802.11 products which are produced only by one vendor;
h) Whether the University has erroneously and arbitrarily considered any band authorized by the FCC other than 802.11 products as a “proprietary band or spectrum” not authorized by the ITN;

i) Whether, contrary to the University’s Questions and Answers in Addendum No. 2, the Schlage wireless lock systems do not operate on a “proprietary band or spectrum”;

j) Whether the University has intentionally shown bias and favoritism towards ASSA Abloy and its products in the issuance of the ITN;

k) Whether ASSA Abloy or any of its consultants, representatives, or employees have communicated to the University as to specifications that should be included in the ITN;

l) Whether other vendors that wish to incorporate Schlage wireless locks into their responses to the ITN for an access control security system have interpreted the University’s Addendum No. 2 as prohibiting the use of Schlage products; and

m) Whether the best value to the University will be achieved by fair and open competition that allows for consideration of various access control security systems, including systems with competing wireless lock systems, rather than a system that can be supplied by only one manufacturer.

**ULTIMATE FACTS REQUIRING REVERSAL OF THE UNIVERSITY’S ACTION**

23. Schlage contends that the University’s actions as to issuance of Addendum No. 2 restricting the ability to supply comparable products is arbitrary, capricious, contrary to competition, contrary to public policy, not in compliance with the initial specifications in the ITN, not in compliance with applicable rules, and otherwise clearly erroneous and not in
compliance with applicable Florida law. The following particular and specific ultimate facts require reversal of the University’s actions:

a) The initial ITN specifically recognized and authorized proposals that would use wireless lock solutions that were comparable to the specifications relating to the use of a “802.11” frequency for wireless communications;

b) Schlage manufactures, distributes, and supplies a wireless lock system that is not only comparable to systems using 802.11 hardware but is comparable and superior to such systems;

c) The University materially changed the ITN specifications in issuing Addendum No. 2 by requiring “any wireless lock solution to use 802.11 compliant hardware” without the ability to offer a comparable or superior solution;

d) The Federal Communication Commission has promulgated regulations for unlicensed communication equipment that includes allowance of three “ISM” bands for unlicensed communication, including the following: 902-928 MHz; 2.4 to 2.4835 GHz (used in 802.11 products); and 5.725 to 5.875MHz;

e) Wireless locks using 802.11 are manufactured and produced by only one company and its subsidiaries (ASSA Abloy);

f) Wireless lock products using the other FCC authorized bands for wireless communication are comparable and in many ways superior to the ASSA Abloy 802.11 locks now explicitly mandated by the ITN;

g) Wireless lock systems using the 915 MHz band (approved by the FCC) are superior to 802.11 in terms of real-time operation, extended range, extended battery life, and is less susceptible to noise;
h) There are multiple vendors that manufacture and distribute wireless lock systems that do not operate as 802.11, and instead operate on other FCC approved frequencies;

i) Competition would be best served by allowing for wireless lock solutions that use comparable bands to those used by 802.11 products, which are produced only by one vendor;

j) The University has erroneously and arbitrarily considered any band authorized by the FCC other than 802.11 products as a “proprietary band or spectrum” which is not authorized by the ITN;

k) Contrary to the University’s Questions and Answers in Addendum No. 2, the Schlage wireless lock systems (as well as wireless locks of other vendors) do not operate on a “proprietary band or spectrum”;

l) The University has intentionally shown bias and favoritism towards ASSA Abloy and its products in the issuance of the ITN;

m) Upon information and belief, ASSA Abloy and/or any of its consultants, representatives, or employees have communicated to the University as to specifications that should be included in the ITN;

n) Multiple vendors that wish to incorporate Schlage wireless locks into their responses to the ITN for an access control security system have interpreted the University’s Addendum No. 2 as prohibiting the use of Schlage products; and

o) The best value to the University will be achieved by fair and open competition that allows for consideration of various access control security systems,
including systems with competing wireless lock systems, rather than a system that can be supplied by only one manufacturer.

**REGULATIONS AND LAW REQUIRING REVERSAL**

24. Regulations and laws requiring reversal of the University’s issuance of Addendum No. 2 include 13.0010R and 13.0020R, sections 120.57(3), Florida Statutes, and interpretative judicial and administrative precedents.

25. It is well established that issuance of specifications must be done in a fair, objective and unbiased manner. See, e.g., *Wester v. Belote*, 138 So. 721, 724 (Fla. 1931) (referring to the competitive bidding statutes, the Florida Supreme Court stated, “[i]n so far as they serve the object of protecting the public against collusive contracts and prevent favoritism toward contractors by public officials and then to secure fair competition upon equal terms to all bidders, they remove temptation on the part of public officers to seek private gain at the taxpayers’ expense, are of highly remedial character, and should receive a construction always which will fully effectuate and advance their true intent and purpose and which will avoid the likelihood of same being circumvented, evaded, or defeated.”) (emphasis added); *Dep’t of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 913 (Fla. 1988) (stating the purpose of competitive bidding, “[i]n addition to providing a means by which good or services required by public authorities may be acquired at the lowest possible cost, (citation omitted), the system of competitive bidding protects against collusion, favoritism, and fraud in the award of public contracts.”).

26. Where a public agency prepares a bid specification that could be met by the equipment of only one manufacturer, such specification subverts the purpose of competitive bidding, and is arbitrary, capricious and illegal. See, e.g., *Neel Mech. Contractors, Inc. v. Fla.*
Agric. & Mech. Univ., DOAH Case No. 99-3424BID (Fla. Div. Admin. Hrgs. Nov. 12, 1959) (concluding that it was appropriate to reject all bids where specification contained in bid documents could be met by only one manufacturer; administrative law judge reasoned that rebid was appropriate where the agency either intended to restrict the specifications to one product without complying with the requirements for a sole-source procurement or intended to permit more than one product, but such intent was frustrated by the specification); Mayes Printing Co. v. Flowers, 154 So. 2d 859, 865 (Fla. 1st DCA 1963) ("[w]here the specifications are drawn in such manner that it would permit only one bidder to qualify, it is a violation of the statute."); Robinson v. Short, 146 So. 2d 108, 109 (Fla. 1st DCA 1962) (specification permitting only one bidder permits favoritism and fails to meet statutory requirements relative to competitive bidding); City of Opa Locka v. Trustees of the Plumbing Indus. Promotion Fund, 193 So. 2d 29 (Fla. 3d DCA 1966) (where competitive bidding is required, any ordinance which unduly limits the number of bidders thus tending to increase the cost of the work is void); Fairbanks, Inc. v. Dep't of Transp., 635 So. 2d 58, 59-60 (Fla. 1st DCA 1994) (where bid specifications required use of specific product by a particular manufacturer, manufacturer of a competitor product was entitled to hearing; district court agreed with competitor manufacturer's allegation "that the Department had frustrated competition by specifying, without justification, a static scale system that only one manufacturer can supply"); Hotel China & Glassware Co. v. Bd. of Public Constr. of Alachua Cnty., 137 So. 2d 78, 81 (Fla. 1st DCA 1961) (public authority may not arbitrarily or capriciously discriminate between bidders, or make award on basis of personal preference); Solid Waste Recovery Systems v. Dep't of Corr., DOAH Case No. 89-5854BID (Div. Admin. Hrgs. Feb. 7, 1990) (where specification allowed only one type of product to meet specification, proper
remedy was to reject all bids and re-issue a new specification that allowed for competing products to be bid.

27. The issuance of Addendum No. 2 in the solicitation process in the instant case curtailed and prevented free and open competition as is otherwise required by Florida law. See, e.g., Wester v. Belote, 138 So. 721, 724 (Fla. 1931); Dep’t of Transp. v. Groves-Watkins Constructors, 530 So. 2d 912, 913 (Fla. 1988); Hotel China & Glassware Co. v. Board of Public Construction of Alachua County, 130 So. 2d 78, 81 (Fla. 1st DCA 1961) (public authority may not arbitrarily or capriciously discriminate between bidders, or make award on basis of personal preference); Liberty County v. Baxter’s Asphalt & Concrete, Inc., 421 So. 2d 505 (Fla. 1982); Marriott Corp. v. Dade County, 383 So. 2d 662 (Fla. 3d DCA 1980) (port authority award overturned where award was contrary to charter and made solely because the contractor was a local man who would use local contractors and local labor and would patronize local supply houses).

28. The adoption of a standard that can be met by only one manufacturer raises a serious concern of bias or favoritism in the process. See Neel Mech. Contractors, Inc. v. Fla. Agric. & Mech. Univ., DOAH Case No. 99-3424BID (Fla. Div. Admin. Hrgs. Nov. 12, 1999). Bias or appearances of favoritism are frequent successful grounds in public procurement protests. Even the potential appearance of bias or a conflict of interest can be grounds to sustain a solicitation protest. See, e.g., Compass Envtl., Inc. v. Univ. of Envtl. Prot., Case No. 05-0007, 2005 WL 678870 at ¶¶ 46-55, 77 (DOAH March 21, 2005) (holding evaluators properly removed due to potential appearance of conflict, and holding that it was unnecessary to show “hard fact” evidence of actual bias or favoritism) (DEP Apr. 19, 2005 reversing on other grounds); Transp. Mgmt. Servs. of Broward, Inc. v. Commission for the Transp. Disadvantaged,
Case No. 05-0920, 2005 WL 1210021 (DOAH, May 20, 2005) (appearance of impropriety); Medco Behavioral Care Corp. v. State of Iowa University of Human Services, 553 N.W. 2d 556 (Iowa 1996) (holding appearance of conflict of interest was sufficient to nullify proposed contract award).

29. For all of the reasons set forth herein, the specification change issued by the University in Addendum No. 2 to the ITN is erroneous, arbitrary, capricious, illegal, and illogical action contrary to competition.

30. Schlage’s proposal to have a more competitive process is clearly in the best interest of the University and will result in the best value and best solution.

**BOND**

Pursuant to Rule 13.0300R the required protest bond in the amount of $10,000.00 has been posted and filed with this Formal Written Protest.

**RELIEF REQUESTED**

Petitioner Schlage respectfully requests the following:

a) That the solicitation process be stopped pending final resolution of this protest;

b) That the University meet with Schlage to determine an acceptable resolution of this protest, including issuance of an Addendum recognizing that proposals may include wireless lock solutions that use systems or products that are comparable to 802.11, and that Schlage wireless locks are not precluded from meeting the requirements to the ITN;
c) That, if settlement is not reached, that this matter be assigned to the Division of Administrative Hearings for a full and fair evidentiary hearing before an administrative law judge; and

d) That the University and/or ALJ provide such other relief as deemed just and appropriate.

Respectfully submitted,

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Counsel for Petitioner,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by hand delivery with the University of North Florida c/o Gaea Holt, Issuing Officer, Senior Buyer, Purchasing Department, 1 UNF Drive, Hicks Hall, Building 53, Suite 2950, Jacksonville, Florida, 32224, and a copy has been provided via electronic mail to P. Christopher Wrenn, Senior Associate General Counsel, The University of North Florida 1 UNF Drive, Jacksonville, Florida, 32224, (904) 620-1007, cwrenn@unf.edu this 3rd day of March, 2014.

Timothy B. Elliott

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