PROTEST RELATED TO
STATE UNIVERSITY CONTRACT PROCUREMENT PROCESS

SCHLAGE LOCK COMPANY, LLC

protestor,

vs.

THE UNIVERSITY OF NORTH FLORIDA
BOARD OF TRUSTEES,

University.

/ 

UNIVERSITY’S RESPONSE TO FORMAL WRITTEN BID PROTEST
AND PORTIONS FOR FORMAL ADMINISTRATIVE HEARING

Pursuant to University of North Florida Regulation 13.0020R(II)(7), the University of North Florida Board of Trustees ("University"), through its undersigned counsel, files this permissive response to Formal Written Bid Protest and Petition for Formal Administrative Hearing filed by Schlage Lock Company, LLC ("Schlage") challenging the action of the University, and states:

NATURE OF THE PROCEEDINGS

1. University admits that this is a competitive procurement protest proceeding for the ITN identified by Schlage, but denies that the proceeding can be properly brought under section 120.57(3), Florida Statutes. This protest is governed by University of North Florida Regulation 13.0020R. The proper University party is The University of North Florida Board of Trustees, a public body corporate.

2. University admits that Schlage has determined Schlage's focal point, but denies the remaining allegations contained in paragraph 2.
3. University admits that Schlage challenges Addendum 2, but denies the remaining allegations contained in paragraph 3.

**THE CHALLENGED AGENCY ACTION**

4. University admits that Schlage challenges Addendum 2, but denies the remaining allegations contained in paragraph 4.

**THE PARTIES**

5. University is without knowledge and demands strict proof of the allegations contained in the first sentence in paragraph 5. University acknowledges Schlage’s identifying notice information contained in the second sentence of paragraph 5. On information and belief, Schlage is a Florida limited liability company.

6. University is without knowledge of the allegations contained in paragraph 6. On information and belief, Allegion is a foreign legal entity not registered with the State of Florida Division of Corporations.

7. University admits that the University of North Florida is part of the State University System under Section 7(d), Art. IX, Florida Constitution, but denies that University is a state agency as defined in section 120.52, Florida Statutes.

**PROCEDURAL AND BASIC FACTUAL BACKGROUND**

8. University admits the allegations contained in paragraph 8.

9. University denies the allegations contained in paragraph 9. University is without knowledge as to which “Allegion” entity Schlage refers. On information and belief, an employee of “Allegion,” representing “Allegion,” attended that conference, and neither Schlage nor any employee of Schlage attended the mandatory pre-proposal conference. Under University of North Florida Regulation 13.0020R(II)(1), Schlage was required to attend that conference in order to have standing to initiate this protest. Schlage is not a Protestor within the meaning of University of North Florida Regulation 13.0020R(II)(1).
10. University admits that the ITN identified specifications for the various hardware and software components of the security system to be offered, but is without knowledge of the other allegations contained in paragraph 10.

11. University admits the allegations contained in paragraph 11, except for the inclusion of the word, “Importantly,” in that paragraph.

12. University admits that on February 24, 2014, University issued Addendum No. 2, but denies the other allegations contained in paragraph 12.

13. University admits that the allegation contained in the first sentence of paragraph 13, but denies the other allegations in paragraph 13.

NOTICE OF DECISION AND TIMELY PROTEST: STAY OF PROCEEDINGS

14. University admits that University posted Addendum No. 2 on February 24, 2014 and that Schlage filed its Notice of Intent within 72 hours following that posting, but University demands strict proof of the other allegations in paragraph 14.

15. University denying that section 120.57(3) governs this protest and demands strict proof of the remaining allegations (timely filing) in paragraph 15.

16. University denying that section 120.57(3) governs this protest and demands strict proof of the timely filing allegations in paragraph 16. The solicitation process was stopped by notice posted to the University’s Purchasing Department website on March 3, 2014.

17. University demands strict proof of the allegations contained in paragraph 17. University alleges that Schlage is a lock company which manufactures locks for other entities that design, produce, and install access control security systems of the nature identified in the University’s ITN. On information and belief, “Allegation” is one of several entities for which Schlage manufactures locks.

18. University is without knowledge of the allegations contained in paragraph 18.

19. University denies the allegations contained in paragraph 19.
20. University denies the allegations contained in paragraph 20.


22. University admits that Schalge identifies issues Schalge disputes in paragraph 22, but contends that not all issues identified are relevant to the determination of the merits of this protest. The following particular and specific disputed issues have been identified by University as of the date hereof:

(1) Whether Schalge has standing to initiate this protest since Schalge failed to attend the pre-bid conference mandated by the ITN.

(2) Whether Schalge is a Protestor within the meaning of University Regulation 13.0020R(II)(1).

(3) Whether Schalge is a manufacturer of door locks that supplies its manufactured product to Allegion and multiple vendors not related to Schalge.

(4) Whether University had a rational basis on which to require in its ITN specifications the use of either: (i) wireless mortise locks that meet an IEEE 802.11 (2.4 GHz) basis of design, or (ii) other wireless mortise locks that are comparable to the specifications, which require 802.11.

(5) Whether University is required to alter ITN specifications when competition exists within the parameters of University's ITN specifications.

(6) Which party bears the burden of proving that the protested University action is erroneous, arbitrary, capricious, illogical, unlawfully contrary to competition or contrary to public policy, not in compliance with initial ITN specifications, or otherwise unlawful or not in compliance with applicable law.

University 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, including without limitation, evidence that this protest was initiated for an improper purpose, as provided under University Regulation 13.0020R(II)(21).
23. University denies or is without knowledge of Schlage’s contentions in paragraph 23, subparagraph d) and subparagraphs f) through o) and denies all contentions in paragraph 23 to the extent they are inconsistent with the following particular and specific facts:

(a) University has had no contact with ASSA Abloy or other manufacturers as to specifications that should be included in the ITN since commencement of the ITN process.

(b) University engaged, through a public solicitation process, TLC Engineering, an expert consulting firm, to evaluate the range of options, benefits, advantages, risks, availability, and issues associated with obtaining integrated solutions for implementing an access control security system for its campus housing, and such consultant assisted University in developing the ITN specifications.

(c) University required in its ITN specifications the use of either: (i) wireless mortise locks that meet an IEEE 802.11 (2.4 GHz) basis of design, or (ii) other wireless mortise locks that are comparable to the specifications, which require 802.11 compliant hardware.

(d) Addendum 2 to the ITN confirms that the specification requires wireless lock solutions to use 802.11 compliant hardware.

(e) Schlage is a manufacturer of door locks that supplies its manufactured product to Allegion and multiple vendors not related to Schlage. Allegion and such multiple vendors, and not Schlage, are access control integration firms that provide integrated solutions for implementing an access control security systems.

(f) Allegion, an access control integration firm, rather than Schlage, a manufacturer, attended the pre-bid conference mandated by the ITN.

(g) Prior to the protest, Allegion communicated to University Allegion’s intent to submit a proposal in response to the ITN.

(h) Schlage did not communicate with University regarding the ITN until Schlage’s counsel contacted University regarding Schlage’s intent to file Schlage’s notice of intent to protest the ITN specifications.
(i) On information and belief, ASSA ABloy is not the only manufacturer that can supply (i) wireless mortise locks that meet an IEEE 802.11 (2.4 GHz) basis of design, or (ii) other wireless mortise locks that are comparable to the ITN specifications, which require 802.11.

24. University denies that regulations and laws require reversal of the issuance of Addendum 2. University denies that section 120.57(3), Florida Statutes, is applicable to this protest.

25. University admits that paragraph 25 contains a partial summary of Florida case law relating to competitive bidding of state or public contracts. University contends that the facts, law and/or regulation applicable to this protest are distinguishable from the facts, law and/or regulation set forth in the cases recited in paragraph 25.

26. University admits that paragraph 26 contains a partial summary of Florida case law relating to competitive bidding of state or public contracts. University contends that the facts, law, and/or regulation applicable to this protest are distinguishable from the facts, law and/or regulation set forth in the cases recited in paragraph 26.

27. University denies the allegations contained in paragraph 27.

28. University admits that paragraph 28 contains a partial summary of Florida case law relating to competitive bidding of state or public contracts. University contends that the facts, law and/or regulation applicable to this protest are distinguishable from the facts, law and/or regulation set forth in the cases recited in paragraph 28.

29. University denies the allegations contained in paragraph 29.

30. University denies the allegations contained in paragraph 30.

POST-PROTEST PROCEDURAL REQUIREMENTS AND FACTUAL BACKGROUND

31. Pursuant to Regulation 13.0020R(11)(9), on March 11, 2014, University and Schlage held informal discussions to resolve the protest by mutual agreement. University and Schlage failed to reach agreement. There are disputed issues of material fact.
32. Pursuant to Regulation 13.0020R(II)(10), University’s President appointed Scott Bennett, Associate Vice President, Office of the President, The University of North Florida, as the University Official to review the material filed by the parties to determine whether there are disputed issues of material fact.

33. Schlage’s Formal Written Bid Protest, this Response to the protest, and all other materials filed by Schlage and the University have been submitted by the Issuing Office to the University Official to determine whether disputed issues of material fact exist.

34. Pursuant to Regulation 13.0020R(II)(13), if the University Official determines that any disputed issues of material fact exist, the President will refer Schlage’s Formal Written Bid Protest to a Quasi-Judicial Officer for a quasi-judicial hearing.

BOND

35. University admits that the protest bond posted and filed with the Formal Written Protest in a sufficient amount.

Respectfully submitted,

[Signature]

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Counsel for The University of North Florida
Board of Trustees
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed with the Purchasing Office of the University of North Florida, c/o Gaea Holt, 1 UNF Drive, Hicks Hall, Building 53, Suite 2950, Jacksonville, Florida 32224 and a copy has been provided by electronic mail to Geoffrey D. Smith, 3301 Thomasville Road, Suite 2012, Tallahassee, Florida 32308 (850)297-2006, (Geoff@smithlawth.com) this 18th day of March, 2014.

P. Christopher Wrenn