

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Lucidity Wealth Strategies, Inc.

Medical University of South Carolina
IFB # 4860-9/23/13-2786-G

Student Group Long Term Disability
Insurance

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2013-142

POSTING DATE: January 9, 2014

MAILING DATE: January 9, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed by Lucidity Wealth Strategies, Inc. (Lucidity) under authority of South Carolina Code Section 11-35-4210. With this invitation for bids (IFB), the Medical University of South Carolina (MUSC) attempts to procure Student Group Long Term Disability Insurance. After evaluating the bids received, on November 5, 2013, MUSC posted its Statement of Award to Dearborn National Life Insurance Company. On November 15, 2013 Lucidity protested MUSC's award, alleging:

[T]he period for bid submission was not open long enough for bidders to create offers. This created an unfair advantage to the current contract holder and consecutive winner of the bid. The period between the release of data required to create a bid and the submission deadline was not long enough to create vendor offers. Since the current contract holder already had the needed data they were the only ones that could timely submit a quote.

As the issues to be decided are statutory, the CPO makes this decision without a hearing, based upon an administrative review of the protest letter and the procurement file.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On September 4, 2013, MUSC published the IFB. [Ex. 1] MUSC asked for bids to be delivered by September 23, 2013.
2. On September 13, 2013, MUSC closed the period for bidders to submit questions regarding the IFB.
3. On September 19, 2013, MUSC issued Amendment #1. [Ex. 2] MUSC extended the bid opening until October 10, 2013.
4. On October 7, 2013, MUSC issued Amendment #2, the final amendment. [Ex. 3] MUSC extended the bid opening until October 21, 2013, fourteen days after issuing the amendment.
5. On October 21, 2013, MUSC opened the one bid received.
6. On November 5, 2013, MUSC posted its Award. [Ex. 4]
7. On November 15, 2013, the CPO received the protest letter from Lucidity.

CONCLUSIONS OF LAW

The Consolidated Procurement Code provides bidders protest privileges:

(1) Right to Protest; Exclusive Remedy.

(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

S.C. Code Ann. § 11-35-4210 (2012).

Lucidity protested “the period for bid submission was not open long enough for bidders to create offers.” Clearly, the protest relates to the solicitation, as amended, and the time it

allowed bidders to submit their bids. MUSC issued the last amendment, Amendment #2, on October 7, 2013. Lucidity knew the grounds for its protest on or about that date. However, Lucidity did not file its protest with the CPO until November 15, 2013, well past the fifteen days allowed by law for a protest of a solicitation.

The South Carolina Procurement Review Panel (“Panel”) has repeatedly held that the time for filing cannot be waived. *In Re: Protest of Jones Engineering Sales, Inc.*, Panel Case No. 2001-8 (finding that the CPO did not have jurisdiction to rule on the protest issue because the time for filing protests of the solicitation is jurisdictional and may not be waived); *In Re: Protest of National Cosmetology Ass’n*, Panel Case No. 1996-17 (finding that “where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver”); *In Re: Protest of Vorec Corporation*, Panel Case No. 1994-9 (finding that a protest of award was untimely when it was filed one day after the deadline established by the Code prior to its amendment). The Panel has explained its rationale for why this time limit is jurisdictional and cannot be waived as follows:

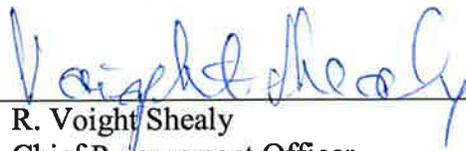
[I]t is essential to the operation of government that challenges to its purchasing decisions be limited. If the time for filing protests can be waived, the state will be unable to determine with certainty when it can enter into a contract with one vendor for vital goods and services without the danger of being liable to another vendor.

In Re: Protest of Oakland Janitorial Services, Inc., Panel Case No. 1988-13.

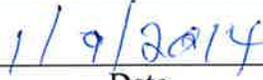
DETERMINATION

For the reasons stated above, the protest is denied.¹

¹ The CPO does implore MUSC to be considerate of bidders’ responsibilities and the time required to prepare their bids. The census data Lucidity states it required to underwrite the insurance was not provided the bidders until Amendment #2, fourteen days in advance of the bid opening (10 working days, according to Lucidity).



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 108.1 of the 2013 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____
Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

Skinner, Gail

From: Protest-MMO
Sent: Friday, November 15, 2013 1:10 PM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Protest of Award: Contract Number: 4860-9/23/13-2786-G

From: William
Sent: Friday, November 15, 2013 1:09:43 PM (UTC-05:00) Eastern Time (US & Canada)
To: Protest-MMO
Subject: Protest of Award: Contract Number: 4860-9/23/13-2786-G

Dear Chief Procurement Officer, MMO

I'm writing this protest for award of contract #: **4860-9/23/13-2786-G , Student Group Long Term Disability Insurance** posted on 11/5/2013 on the grounds that the period for bid submission was not open long enough for bidders to create offers. This created an unfair advantage to the current contract holder and consecutive winner of the bid. The period between the release of data required to create a bid and the submission deadline was not long enough to create vendor offers. Since the current contract holder already had the needed data they were the only ones that could timely submit a quote.

4860-9/23/13-2786-G, Student Group Long Term Disability Insurance is a complex program to underwrite. A group disability insurance policy for 1,012 individuals split into three (3) different coverage benefit classes was open for award. For each class underwriters of a policy had to consider age, gender, duties, program year, occupational hazards and prior claims experience. Adding to the complexity of generating a quote is that no current income, a fundamental metric of disability benefit, is received by this group.

Ten (10) business days were given from the date census data, necessary to underwrite a valid offer to MUSC, was made available and the deadline for submission. Because of the complexity of the risk to be insured, no insurance company was able to provide a quote based on the census made public in solicitation amendment two (2). Well except for the current contract holder. Since the Statement of Award I have spoken with seven (7) other insurance producers who also could not get insurance quotes underwritten in the time allotted. This solicitation was sent to 647 licensed agent in South Carolina via a service of the South Carolina Association of Insurance and Financial Advisors so I'm sure others were also working to bid. I worked with four different insurers company underwriting teams to produce a quote and I beat them up to daily to expedite. MetLife, an experienced company, took fourteen business days to produce a quote for submission. Next best was 18 days. However I did stop pushing for production after the submission deadline passed.

Only one (1) offer was submitted to MUSC for the contract. That of the current insurer. The reason I'm taking the time to protest is that MUSC is near and dear to me. I've volunteered 3 hours of my time bi-weekly for 5 years to the MUSC Foundation. I care on many different levels. Thus when current insurer Dearborn National South Carolina won the solicitation award for a much higher cost than what I submitted (late) I was dumbfounded. Not because of the cost, but because Dearborn has ceased doing business in South Carolina. Some feel the insurer will not be solvent in the near future. How could a company not allowing new business in South Carolina win this award?

The relief that I request is that this invitation for solicitation be opened again for bids for a five (5) business day period. All that inquired on the offer be given notice of the reopening. I know of seven (7) others who have fully underwritten quotes ready for submission as they were received by these producers after submission deadline. No other action is needed. This would give a fair advantage to all and save the University thousands in premium payments.

Thank you for considering action to allow for a fair award of this contract.

William M. Parker, CLTC, LUTCF

Lucidity Wealth Strategies, Inc.

Founder

South Carolina National Association of Insurance & Financial Advisors (NAIFA)

Regional Vice President

843.345.7021

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