

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In Re: Request for Resolution of Contract
Controversy by Miracle Hill Ministries
(Contract No. 4400003878)

CASE NO. 2014-113

Request for Resolution of Contract
Controversy by Excalibur Youth Services
(Contract No. 4400003862)

CASE NO. 2014-114

Solicitation No. 5400002885 – Statewide
Residential Services for Children for the
Department of Social Services

POSTING DATE: September 15, 2014

MAILING DATE: September 15, 2014

The South Carolina Consolidated Procurement Code (the “Code”) authorizes a contracting state agency or the contractor or subcontractor, when the subcontractor is the real party in interest, to initiate resolution proceedings before the appropriate chief procurement officer of controversies that arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. S.C. Code Ann. § 11-35-4230. Miracle Hill Ministries and Excalibur Youth Services requested resolution of issues related to Contract Number 4400003878 and Contract No. 4400003862 for Statewide Residential Services for Children. Miracle Hill filed two claims, one directed to the original contract and its renewal terms (Attachment 1) and another to “Change Order 3” (Attachment 2). Excalibur’s claim challenges the change order amount and appears as Attachment 3. Since these requests address similar issues related to the same solicitation, the CPO¹ addresses both in this order. In aid of his administrative review of the issues the CPO held a hearing on September 8, 2014. Present at the hearing were representatives of Miracle Hill, represented by Rivers Stillwell, Esquire; Excalibur, represented by Lewis F. Gossett, Esquire; DSS represented by Kathy Gettys, Esquire and Joel S. Hughes, Esquire and the Materials Management Office, represented by Acting State Procurement Officer Alan Register.

Findings of Fact

Solicitation Issued	April 12, 2011
Amendment One Issued	April 26, 2011
Amendment Two Issued	May 12, 2011

¹ The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

Amendment Three Issued	May 18, 2011
Amendment Four Issued	June 3, 2011
Opening Date	June 3, 2011
Intent To Award Issued	June 20, 2011
Award Effective Date	June 30, 2011
Contract Commencement Date	July 1, 2011
Amendment Five Issued	May 25, 2012
Amendment Six Issued	September 4, 2012
Amendment Seven Issued	April 9, 2013
Amendment Eight Issued	April 26, 2013

Background

The Materials Management Office awarded multiple contracts for statewide residential services for children through a Fixed-Price Bid for the Department of Social Services. The purpose of the solicitation was to obtain an array of residential services statewide for children/youth who have been victims of abuse and neglect and who are in the custody of the South Carolina Department of Social Services (DSS). The solicitation established a maximum rate² DSS would pay per day for the requested services and awards were made to responsible bidders willing to provide the requested services at or below the pre-established daily rates. Miracle Hill Ministries and Excalibur Youth Services were both awarded one-year contracts on June 30, 2011 and those contracts have been renewed each year since by mutual agreement. In March of 2014, DSS increased some of the daily rates through a contract modification.

Miracle Hill and Excalibur requested resolution of a contract controversy between it and DSS generally claiming that the daily rates set in the contract and the contract modification do not accurately reflect the cost of delivering the service. More specifically, Miracle Hill alleges that:

- DSS failed to process data and adjust rates in a timely manner.
- DSS failed to meet its responsibility under Title IV E to reimburse providers for the full cost incurred in providing required services
- DSS failed to establish a reasonable cost methodology to follow in setting a reimbursement rate for providers. Leaving providers with a rate that was insufficient to cover actual costs associated with providing required services.

Excalibur alleges that:

² REIMBURSEMENT - Solicitation, Page 53

- The announced methodology of the DSS contract payment rate is not in conformity with the rate calculations by which the payment rate should be calculated under the S.C. Consolidated Procurement Code, S.C. Code of Laws, 11 -35-10, et seq., or under the Contract Number #4400003862.
- DSS has unilaterally excluded allowable costs and reasonable profit outside of the parameters of the aforesaid contract, when calculating the residential daily rate.
- The rate is not in conformity with other similarly residential services purchased by the State of South Carolina.

Neither company alleges any change to the scope of services provided under the contracts.

Discussion

The Code authorizes the Chief Procurement Officer to resolve controversies that arise under or by virtue of a contract between the parties. Allegations of a breach of contract, mistake, misrepresentation, or other cause for contract modification or recession must be based on obligations, duties, promises, or representations set forth or implied in the contract. The documents comprising this contract are defined in the solicitation as follows:

(a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

[Solicitation, Page 61]

The primary allegation of Miracle Hill and Excalibur is that DSS failed to adjust the daily rates to accurately reflect the cost of providing the services required by the contract. Neither has pointed to any contract provision that requires DSS to increase the contract prices without any change in the scope of

work. In fact, when asked for the basis of the claim, Mr. Bateman answered that he entered the contract with a good faith assumption that DSS would increase prices after award.

In a section of the solicitation titled “Service Standards,” contractors are required to collect data on “performance outcomes.” The reason for the requirement is explained thus:

Under this Scope of Work, SCDSS desires to introduce Performance Based Outcomes. This is to initiate the preparation and capacity building for an outcome based contractual system. Providers will begin to collect data on performance outcomes for each set of standards in their bid. The data and performance indicator collection must be maintained by the Provider for a minimum of five (5) years following the award. **SCDSS intends to utilize the collection of the Performance Outcomes in the future for rate setting, placement decisions and for the purchase of services.**

[Solicitation, Page 18 (emphasis added)] Three pages later, under “Financial Reporting Requirements,” the solicitation explains that “SCDSS **may** adjust daily rates based on the information collected.” [Solicitation, Page 21 (emphasis added)] This indication that the performance data collected will be used in developing rates at some point in the future is also found in the answer to question 95 in Amendment 2:

95) How will outcomes be utilized for rate setting, placement decisions, and purchase of services?

Response: **Outcome data may be used by SCDSS in the future in developing rates,** purchasing services and by SCDSS case managers in making placement decisions. This is the beginning step in building capacity for an outcome based contractual system which the SCDSS is moving towards.

[Amendment 2, page 16 (emphasis added)]

DSS is currently working with contractors to adjust rates, and DSS did adjust the rates in March of 2014 with the issuance of Change Order 3.³ However, there is simply nothing in the contract requiring or authorizing DSS to adjust the rates without a corresponding change in the scope of work.⁴

³ This document was titled a Change Order, but the body of the document indicated that it was a Contract Modification. A change order is a modification to a contract arrived at by mutual agreement. [Section 11-35-310(4)] A Contract Modification is a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor. [Section 11-35-310(9)]

⁴ Such an increase must be supported by consideration—the contractor must do more to be paid more. In general terms, the government is entitled to recover payments made to a vendor for which it received nothing, or nothing extra, in return. *Laka Tool & Stamping Co., Inc. v. United States*, 7 Cl. Ct. 213 (1984). South Carolina recognizes the legal principle that an agreement to do that which one is already legally bound to do is not supported by

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Miracle Hill and Excalibur allege that the rates must reflect the actual cost of providing the services under Title IV E of the Social Security Act or some other controlling authority. While these services provided under these contracts might be funded by programs that require full reimbursement of the actual cost to provide the services, nothing in the contract requires the daily rate to reflect the actual cost of providing the services. Nothing in the contract requires DSS to establish a cost methodology to follow in setting the daily rate that reflects the actual cost of providing the services. Finally, nothing in the contract provides it is subject to Title IV E of the federal Social Security Act or other federal program requiring reimbursement of actual costs.

Excalibur argued that the issuance of Change Order 3 invoked the Changes clause in the contract⁵ which requires an adjustment in the contract price to reflect the contractor's cost of, or the time required for, performance of any part of the work under this contract. Under the Changes clause in the contract the Procurement Officer may, subject to all appropriate adjustments, make changes within the general scope of the contract in any one or more of the following:

- (a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the [State] in accordance therewith;
- (b) method of shipment or packing;
- (c) place of delivery;
- (d) description of services to be performed;
- (e) time of performance (i.e., hours of the day, days of the week, etc.); or,
- (f) place of performance of the services. Subparagraphs (a) to (c) apply only if supplies are furnished under this contract. Subparagraphs (d) to (f) apply only if services are performed under this contract.

Changes clause paragraph 2 states:

If any such change increases or decreases the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made in the contract price, the delivery schedule, or both, and the contract modified in writing accordingly.

The only change made by Change Order 3 was to increase the daily rate for the services already being provided by the contractors. Consequently there was no increase or decrease in the contractor's cost or change in the time required to provide the services.

consideration. *E.g., Rabon v. State Finance Corp.*, 203 S.C. 183, 26 S.E. 2d 501 (1943). And S.C. CONST. Art. 3, § 30, bars a contractor from receiving from the State sums over and above the contract price for work agreed to be done under the contract. 1976 S.C. Op. Atty. Gen. No. 4309, 1976 WL 22929.

⁵ Solicitation, Page 65

Motions

DSS moves to dismiss for the following grounds:

The CPO lacks subject matter jurisdiction and authority to hear this matter because the grounds set forth by complainants specifically allege and/or necessarily involve matters of interpretation of federal law(s), federal claims, and/or Title IV-E of the federal Social Security Act.

Section 11-35-4230 grants exclusive jurisdiction to the Chief Procurement Officer to resolve contract and breach of contract controversies. There is no more classic example of those controversies than a contractor's claim that he is owed more money. Excalibur and Miracle Hill are asking the CPO to order DSS to pay more money pursuant to the contract. Unless some exception to the authority granted by § 11-35-4230 exists, the CPO has jurisdiction over the claim. The CPO does not interpret the claims as requesting a declaratory judgment construing federal law. Since there were no requirements that the contract comply with federal law(s), federal claims, and/or Title IV-E of the federal Social Security Act there is no need to the CPO to interpret them. Motion denied.

The grounds filed by complainants relating to the original contract rates of June 10, 2011, are untimely. No protest was filed by either complainant following either the issuance of the solicitation under this contract or in response to any award under this contract. Complainants are seeking to have the CPO hear such arguments now, some 3 years after initial contract award. Such complaints are untimely under S.C. Code Ann. §11-35-4210. Therefore, the CPO lacks jurisdiction to hear and make decisions involving any complaint ground concerning any aspect of original contract rates.

This motion is granted.

Complainants' allegations relating to current contract rates are untimely and fail to state a claim for which relief can be granted because original contract rates were not protested by the complainants, offerors accepted those rates in responding to the solicitation, those have been in effect for over 3 years, and those rates have not been changed unilaterally by DSS.

Section 11-35-4230 authorizes either the contracting state agency or the contractor to initiate resolution proceedings before the appropriate chief procurement officer. It requires that a "request for resolution of contract controversy must be filed within one year of the date the contractor last performs work under the contract." Since the contractors are still providing services under these contracts, their request is timely filed. Motion denied.

Grounds filed by complainants are vague as to any notice pursuant to S.C. Code Ann. §11-35-4230 of alleged breach of contract, mistake, or misrepresentation by DSS and should be

dismissed for failure to provide notice of the issues to be decided and failure to state a claim for which relief can be granted.

This motion is denied.

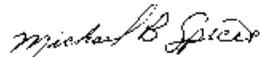
Even if the CPO had jurisdiction and authority over the issues - and DSS' position is that the CPO clearly does not - this matter should be dismissed for lack of a ripe issue of controversy between the parties.

This motion is denied.

Determination

Nothing in the contract supports the contractors' claim to be paid more money for performing an unchanged scope of services. Since Miracle Hill and Excalibur have failed to identify any contract obligation the State has failed to honor, their claims are denied.⁶

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

⁶ Counsel for both claimants requested to make a proffer of evidence of damages. Because the CPO finds no contract provision has been breached, he does not reach the issue of damages. Nothing in this decision is based on any failure or lack of proof of damages. Claimants are welcome to make a written proffer if they believe such an offer of proof may be necessary for a record on appeal.

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 2043 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 26, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

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**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.

Attachment 1

From: Larry Bateman

Sent: Wednesday, March 26, 2014 1:07:34 PM (UTC-05:00) Eastern Time (US & Canada)

To: Shealy, Voight; Manos, Chris; Protest-MMO

Cc: Lori Bailey

Subject: MHM Protest/Contract Controversy 1 Solicitation Number 5400002885

Gentlemen,

The purpose of this email is to file an official protest (Contract Controversy) in regard to Contract 4400003878 related to services render and reimbursement of expenses under Solicitation Number 5400002885 effective **July 1, 2011 – June 30, 2012; July 1, 2012 – June 30, 2013; and July 1, 2013 – June 30, 2014** as issued by the South Carolina Department of Social Services (SCDSS). We would request it be understood that this protest is for each year and should any year, or portion thereof, be disallowed, the remaining would still be under protest.

Reasons for the Protest

Miracle Hill Ministries is a current contract holder under the Fixed Price Bid included in Solicitation Number 5400002885 and has striven to meet contract requirements, even though the cost to do so has greatly exceeded the reimbursement received from SCDSS. Miracle Hill Ministries entered the contract in good faith understanding SCDSS was to collect cost data and develop a new reimbursement rate for providers. Providers were required to submit cost data in January 2013 and we anticipated SCDSS to revise the reimbursement rate by July 1, 2013 or shortly thereafter. SCDSS failed to process the data on a timely basis. All providers were required to submit data in January 2013 based on the most recent fiscal year completed and for which audited financial statements were available. For Miracle Hill Ministries, that was our fiscal year of July 1, 2011 – June 30, 2012.

We contend there are at least two (2) legitimate reasons to protest and the same number of potential remedies:

1. Continuing to limit Level I Group Care providers to the reimbursement of \$85 per day as initially established under Solicitation 5400002885 effective July 1, 2011 imposed undue burden and hardship on providers. SCDSS failed to meet its responsibility under Title IV E to reimburse providers for the full cost incurred in providing required services. The \$85 rate has no reasonable cost methodology behind it. While SCDSS collected cost information from providers in 2010, it has admitted to doing basically nothing with it.
2. SCDSS failed to establish a reasonable cost methodology to follow in setting a reimbursement rate for providers. Leaving providers with a rate that was insufficient to cover actual costs associated with providing required services.

Remedies:

1. Recognition of SCDSS's failure to set a reasonable and statistically sound cost methodology in a timely manner should allow providers to seek reimbursement for actual costs to provide services

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effective with the date of the cost data they submitted in compliance with the Solicitation. For Miracle Hill Ministries, the dates would include our fiscal years of July 1, 2011-June 30, 2012 (first year of the contract); July 1, 2012 – June 30, 2013 and July 1, 2013 – June 30, 2014.

2. SCDSS adjusts the reimbursement of expenses to Miracle Hill Ministries to correspond to its cost report showing \$110 per day expenses incurred (beginning with the July 1, 2011 – June 2012 fiscal year reported in the cost study) to deliver required services under the contract, or a reimbursement rate set using reasonable and sound statistical methods for all Level I providers, whichever is higher.

Differences by Year: Due	Year	Amount Billed @\$85	@\$110	Difference
	FY 2012	\$1,517,165	\$1,963,390	\$446,225
	FY 2013	\$1,509,185	\$1,953,063	\$443,878
	FY 2014	\$1,110,355	\$1,436,930	<u>\$326,575</u>
	(YTD 2/2014)			\$1,216,678

Note: We operate seven (7) facilities for Level 1 children

As you can see, the cost to Miracle Hill has been substantial and the organization has had to rely on its ability to raise financial contributions from donors to pay bills, salaries and other expenses related to fulfilling contract requirements. Furthermore, SCDSS has acknowledged publically that it believes that all services required by the contract are allowable and reimbursable under Title IV E. Miracle Hill has striven to meet the contract requirements in an effective and cost efficient manner. We know that many other providers run at much higher daily costs.

On behalf of Miracle Hill Ministries, I thank you in advance for helping us work through the concerns expressed in this protest.

Sincerely,

Larry Bateman



Larry Bateman | COO

Miracle Hill Ministries

P.O. Box 2546, Greenville, SC, 29602

864-268-4357 (Office) 864-268-2283 (Fax)

www.MiracleHill.org



[website](#) | [map](#)

Miracle Hill exists that homeless men, women and children receive food and shelter with compassion, hear the Good News of Jesus Christ and become productive members of society.

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Attachment 2

From: Larry Bateman

Sent: Wednesday, March 26, 2014 1:07:38 PM (UTC-05:00) Eastern Time (US & Canada)

To: Shealy, Voight; Manos, Chris; Protest-MMO

Cc: Lori Bailey

Subject: MHM Protest/Contract Controversy Number 2 - Solicitation Number 5400002885

Gentlemen,

Please accept this as a second protest/Contract Controversy connected to our contract under Solicitation Number 5400002885:

The purpose of this email is to file an official protest (Contract Controversy) in regard to **Change Order No. 3** in reference to Contract 4400003878 related to services render and reimbursement of expenses under Solicitation Number 5400002885 by the South Carolina Department of Social Services (SCDSS).

Reasons for the Protest

Miracle Hill Ministries is a current contract holder under the Fixed Price Bid included in Solicitation Number 5400002885, Statewide Residential Services Children, and has striven to meet contract requirements, even though the cost to do so has greatly exceeded the reimbursement received from SCDSS.

We contend there are at least five (5) legitimate reasons to protest the changes outlined in the Contract Modification referred to as Change Order No. 3

1. SCDSS has failed to meet its responsibility under Title IV E to reimburse providers for the full cost incurred in providing required services under the current contract and the proposed new rates do not correct the lack of full reimbursement of costs.
2. The previous rate of \$85 per day for Level I Group Care providers has no reasonable cost methodology behind it. Therefore, there is no basis to use it in calculating a new rate or to serve as a basis of a new Cost Methodology – as SCDSS has indicated it did in its newly published Cost Methodology. While SCDSS collected cost information from providers in 2010, it has admitted to doing basically nothing with it. SCDSS has not offered an explanation of how it arrived at the \$85 reimbursement rate.
3. SCDSS failed to establish a reasonable cost methodology to follow in setting a reimbursement rate for providers. The SCDSS Cost Methodology, as recently published, is not reasonable and does not follow sound statistical methods.
4. SCDSS used arbitrary criteria in setting outlying data points, and excluding that data in calculations meant a disproportionate number of providers and representative bed nights were excluded in determining an average cost per night.

5. The changes to Section III., 2.1 (where the word “Reimbursement” is being changed to “Payment Rates”) are inappropriate. Title IV E specifically calls for the reimbursement of a provider’s full and actual cost associated with providing required services. SCDSS’s apparent desire to drift away from acknowledging that responsibility and simply setting “payment rates” violates federal mandates.

Remedies:

1. Recognition of SCDSS’s failure to set a reasonable and statistically sound methodology in a timely manner should allow providers to seek reimbursement for actual costs to provide services effective with the date of the cost data they submitted in compliance with the Solicitation. The cost reported should be adjusted for inflation to better reflect today’s cost. For Miracle Hill Ministries, the dates would include our fiscal years of July 1, 2011-June 30, 2012 (first year of the contract); July 1, 2012 – June 30, 2013 and July 1, 2013 – June 30, 2014.
2. SCDSS adjusts the reimbursement of expenses to Miracle Hill Ministries to correspond to its cost report showing \$110 per day expenses incurred (beginning with the July 1, 2011 – June 2012 fiscal year reported in the cost study) to deliver required services under the contract, or a reimbursement rate set using reasonable and sound statistical methods for all Level I providers, whichever is higher. The rate should be adjusted for inflation and put in place until SCDSS establishes a new reimbursement rate under 3 below.

Differences by Year:	Year	Amount Billed @\$85	@\$110	Difference Due
	FY 2012	\$1,517,165	\$1,963,390	\$446,225
	FY 2013	\$1,509,185	\$1,953,063	\$443,878
	FY 2014	\$1,110,355	\$1,436,930	<u>\$326,575</u>
	(YTD 2/2014)			\$1,216,678

Note: We operate seven (7) facilities for Level 1 children

3. SCDSS should be required to establish a reasonable statistically sound Cost Methodology using updated cost data from providers.
4. SCDSS shares a copy of their analysis, and/or that of the contracted accounting firm used to assist them, of Miracle Hill Ministries’ cost report and any adjustments made in recalculating a daily rate. Included must be a rationale for any adjustments made.

As you can see, the cost to Miracle Hill has been substantial and the organization has had to rely on its ability to raise financial contributions from donors to pay bills, salaries and other expenses related to fulfilling contract requirements. Furthermore, SCDSS has acknowledged publically that it believes that all services required by the contract are allowable and reimbursable under Title IV E. Miracle Hill has striven to meet the contract requirements in an effective and cost efficient manner. We know that many other providers run at much higher daily costs.

Unfortunately, this protest is being submitted in part due to the fact that SCDSS has been unresponsive to request for information on how the new rates were set and their unwillingness to discuss the rate setting

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methodology with Miracle Hill or the Palmetto Association for Children and Families. We believe reasonable rates can be negotiated with the interested parties.

Again, we thank you for assisting us in being able to resolve the concerns outlined in this protest.

Sincerely,

Larry Bateman



Larry Bateman | COO

Miracle Hill Ministries

P.O. Box 2546, Greenville, SC, 29602

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EXCALIBUR YOUTH SERVICES, LLC.

March 26, 2014

Chris Manos, CPPB
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Contract Number #4400003862
2014 Contract Modification

Mr. Manos-

I have signed and send to you herewith the Contract modification.

Nevertheless, in response to the above contract modification, our organization does further file a Contract Controversy to this modification by the South Carolina Department of Social Services in regard to payment rates based on the following grounds:

1. The announced methodology of the DSS contract payment rate is not in conformity with the rate calculations by which the payment rate should be calculated under the S.C. Consolidated Procurement Code, S.C. Code of Laws, 11-35-10, et seq., or under the Contract Number #4400003862.
2. It appears that this provider's reasonable costs have been excluded from the calculation of its daily residential rate. It has disfavored this provider's business type and organization. DSS has unilaterally excluded allowable costs and reasonable profit outside of the parameters of the aforesaid contract, when calculating the residential daily rate.
3. The rate is not in conformity with other similarly residential services purchased by the State of South Carolina.
4. Insufficient time was given to more fully set the allegations in regard to inadequate rate, and this provider reserves the right to more fully address this controversy at a later time.

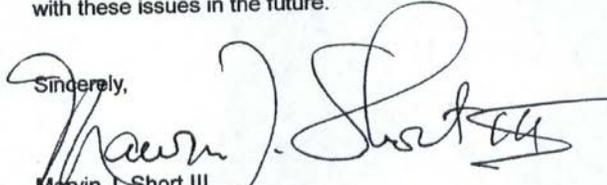
Based on the grounds mentioned above, this provider requests that the daily rate should be increased to rates sufficient to provide all the necessary services and staff coverage that SC DSS requires and to increase funding to support placement of children. This provider requests fair reimbursement for the expenses it has incurred for the care of children in its facility.

March 26, 2014

Please advise to whether this submission is sufficient to provide residential services beyond June 30, 2014, to charge the slightly enhanced daily rate of \$131.71, and to reasonably dispute the calculation of the daily rate by State of South Carolina Department of Social Services.

As always, I thank you for your most kind attention to this matter and patient assistance with these issues in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Marvin J. Short III". The signature is written in a cursive style with a large, stylized initial "M".

Marvin J. Short III
Member, Excalibur Youth Services, LLC
mshort@recoverouryouth.org
864-313-6967



State of South Carolina

Change Order No. 3

Contract Number : 4400003862
Procurement Officer: Chris Manos, CPPB
Phone: (803) 737-4917
E-Mail Address: cmanos@mmo.sc.gov
Address: 1201 Main Street Suite 600
Columbia SC 29201

DESCRIPTION: STATEWIDE RESIDENTIAL SERVICES CHILDREN

USING GOVERNMENTAL UNIT: Department of Social Services

CONTRACTOR'S NAME AND ADDRESS: EXCALIBUR YOUTH SERVICES LLC
PO BOX 968
GREENVILLE SC 29690

TYPE OF CHANGE:

- X Change to Contract Scope of Work
Change to Contract Pricing Pursuant to Existing Contract Clause.
Clause Name Changes (JAN 2006) Clause No. 07-7B025-1
Administrative Change to Contract (such as changes in paying office, name of Agency Contract Administrator, etc.)
Other Change

IMPORTANT NOTICE:

- Change Order: Contractor is required to sign this document and return one copy to the procurement officer named above by the following date:
Contract Modification: Contractor is required to acknowledge receipt of this document in writing by the following date: March 27, 2013. It is preferred that the signed document is scanned and emailed to the email address provided above or signed document may be faxed to 803-737-0639. Contractor does not indicate agreement with change simply by acknowledging receipt.

DESCRIPTION OF CHANGE / MODIFICATION:
Contract No. 4400003862 is hereby amended as detailed on page 2 attached to this document.

CONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA: The Contractor certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, by the Contractor to the Procurement Officer in support of this change order are accurate, complete, and current as of the date this change order is signed. [Procurement Officer must initial here if Certificate inapplicable to this Change Order] (See "Pricing Data - Audit - Inspection" provision.) (Reference § 11-35-1830 & R. 19-445.2120)

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE THIS CHANGE ORDER & CERTIFICATE ON BEHALF OF CONTRACTOR:

By: [Signature]
Marvin J. Short III
(printed name of person signing above)

Its: Member
(title of person signing above)

Date: 03/26/2014

SIGNATURE OF PERSON AUTHORIZED TO EXECUTE / ISSUE THIS CHANGE ORDER / CONTRACT MODIFICATION ON BEHALF OF USING GOVERNMENTAL ENTITY:

By: [Signature]
Chris Manos
(printed name of person signing above)

Its: Procurement Manager
(title of person signing above)

Date: 3/26/2014

CHANGE ORDER (MAY 2011)

Extension:

The term of this contract is extended from July 1, 2014 to June 30, 2015.

Change Order Language:

The parties agree that the portion of Solicitation 5400002885, III., 2., is changed as follows:

III., 2.1 REIMBURSEMENT is changed as follows, with all other portions of current III., 2.1 REIMBURSEMENT remaining the same.

S. PAYMENT RATES:

Payments for services rendered under this contract will be at the rates below, effective April 1, 2014, unless providers specifically respond to this Fixed Price Bid with an offer to provide the contract services at a lower rate.

Group Care

Level 1 – up to \$86.12 per day

Level 2 – up to \$98.27 per day

Level 3 – up to \$131.71 per day

Treatment Foster Homes

Level 1 – up to \$48.49 per day

Level 2 – up to \$68.17 per day