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Protest Decision

Matter of:	Ecalibur Youth Services, LLC	Case 2018-101
	Southeastern Children's Home, Inc.	Case 2018-103
	Avalonia Group Homes, Inc.	Case 2018-104
	Palmetto Association for Children and Families	Case 2018-105
	Helping Hands, Inc.	Case 2018-108
	Windwood Farm Home for Children, Inc.	Case 2018-109
	New Foundations Home for Children, Inc.	Case 2018-110

Posting Date: May 1, 2018

Contracting Entity: South Carolina Department of Social Services

Solicitation No.: 5400013556

Description: Group Care for Children Fixed Price Bid

DIGEST

Protests of issues related to a fixed-price bid are denied. Protestants letters of protest are included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ (CPO) conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on materials in the procurement file and applicable law and precedents.

BACKGROUND

This Fixed Price Bid (FPB) was issued by the State Fiscal Accountability Authority (SFAA) on behalf of the South Carolina Department of Social Services (DSS) on June 23, 2017 to establish a term contract for qualified and established group care facilities throughout the state of South Carolina for children/youth who have clinical, mental, or behavioral service needs that cannot be adequately or safely met in a regular or therapeutic foster home. This is a re-solicitation of an existing contract awarded in June of 2011. Section 11-35-1525(2) sets forth the purpose of a fixed-price bid as:

The purpose of fixed price bidding is to provide multiple sources of supply for specific services, supplies, or information technology based on a preset maximum price which the State will pay for such services, supplies, or information technology.

This solicitation defined three levels of care and a price per day that the state is willing to pay for each level of care: Group Care Level 1 at \$101.03 per day, Group Care Level 2 at \$110.27 per day, and Group Care Level 3 at \$176.82 per day. The solicitation also provided for an additional \$75.00 per day for emergency placements. The solicitation also defined what was covered by these rates and advised bidders that lower daily rates were acceptable:

SCDSS will pay Providers for the services outlined in this document at the following rates, which include room and board and other state services costs. “Room and Board” includes the cost of feeding, supervising, housing, transporting and otherwise providing direct care for the child/youth. “Other state services” are defined as activities such as training, monitoring, and supervision, administering cost and other related non-treatment activities.

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

Offerors must enter the rate they will charge for the listed services. Rates may not exceed those listed below. Offers have the option to submit lower rates. Any offers received at rates that exceed the maximum will be rejected as non-responsive.

[Solicitation, Page 32]

Eight businesses and two trade organizations timely filed protests with the CPO. Subsequently three withdrew their protests. The remaining protesters are: Excalibur Youth Services, LLC; Southeastern Children's Home, Inc.; Avalonia Group Homes, Inc.; Palmetto Association for Children and Families; Helping Hands, Inc.; Windwood Farm Home for Children, Inc.; and New Foundations Home for Children, Inc.

ANALYSIS

1. Standing

Palmetto Association for Children and Families protests:

With this letter, the Palmetto Association for Children and Families (PAFCAF) is filing an official protest of the Group Care for Children Fixed Price Bid (solicitation #5400013556) on behalf of our members, group care facilities across South Carolina.

Section 11-35-4210(1) grants the right to protest a solicitation to a prospective bidder, offeror, contractor, or subcontractor:

(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.

Palmetto represents and advocates for organizations who may submit offers, but is not itself a prospective bidder, offeror, contractor, or subcontractor and consequently does not have standing to protest this solicitation. *See In Re Carolina Alliance for Fair Employment*, Panel Case No. 1992-11 ("In order to have standing to bring a complaint before the Procurement Review Panel,

the protestant must have a direct legal interest at stake, such as a party to the contract or a competitor seeking award of the contract.”). Palmetto’s protest is dismissed.

2. Federal Child Welfare Act of 1980, 42 U.S.C. §§ 670-679

Two protesters claim that the solicitation is infirm or illegal because DSS has failed to comply with Title IV-E of the federal Social Security Act. This law provides for federal payments for foster care and adoption assistance. 42 U.S.C. § 670. Each protester articulates these claims somewhat differently.

Southeastern Children’s Home states in its second issue of protest:

We are further protesting based on the fact that it is our understanding that the federal guidelines call for a rate setting methodology when establishing a daily rate paid by the state to provide for abused and neglected children and their out of home care needs. We understand that a methodology was established in 2015 to set the new Level 1 and Level 3 rates. However, a cost report has been submitted since that time which was not then used to establish the rate which can be found on page 33 of the fixed price bid document. This protest is based on Level 1 rates only.

New Foundations Home for Children claims four discrete violations of federal law:

1. SCDSS will fail to meet its responsibility under Title IV E to reimburse providers for the full cost incurred in providing required services under the proposed new solicitation with the same reimbursement structure.
2. This Solicitation fails to meet South Carolina Procurement Code which requires a state agency to follow Federal law when receiving/disbursing federal funds-S.C. Code Ann. 11-35-40(2) and S.C. Code Ann. 11-35-40(3)
3. The proposed rate of \$176.82 per day for Level 3 Group Care providers has no reasonable cost methodology behind it. Therefore, there is no basis to use it in calculating this proposed rate or to serve as a basis of a new Cost Methodology. SCDSS has not offered an explanation of how it arrived at the \$176.82 reimbursement rate.
4. SCDSS failed to establish a reasonable cost methodology to follow in proposing a reimbursement rate for providers. The SCDSS Cost Methodology is not reasonable and does not follow sound statistical methods. One key component of the past methodology, using a provider's licensed beds instead

of occupied beds in calculating daily costs, is inherently flawed from a cost accounting perspective in that it prevents a provider from receiving full reimbursement of allowed costs unless every licensed bed is occupied 365 days a year.

The CPO has been challenged to treat these claims, because neither protester points to any specific provision of federal law it claims DSS has violated, nor to any authority—state or federal—supporting their allegations the solicitation is thereby illegal. Compounding this difficulty, DSS expressed no position on the protests until the week of April 16, 2018; certain of the protesters provided their comments two weeks later. The CPO is mindful of the Panel’s admonition that if federal law applies to the solicitation the CPO “has the authority to consider and interpret such federal law.” *Appeal by Miracle Hill Ministries*, Panel Case No. 2014-10(I) and n. 4.

The Child Welfare Act of 1980 created Title IV-E of the Social Security Act. Title IV-E allows states to receive reimbursement from the federal government for maintenance payments for foster care. The current reimbursement rate ranges from fifty to eighty-three percent.² To qualify for reimbursement the Act imposes four requirements on the state. First, it must have a plan that has been approved by the Secretary of Health and Human Services. 42 U.S.C. § 671. Section 671(a) sets out thirty-five specific components a state plan must include, not including subparts. Section 671(b) requires the Secretary to approve any state plan that complies with § 671(a).

Second, the plan must require state payment of “foster care maintenance payments” on behalf of each child placed in foster care, provided specific conditions are met. 42 U.S.C. § 672. Section 675(4)(A) defines foster care maintenance payments:

² According to the Title IV E web site:

Maintenance includes room and board payments that are made to licensed foster parents, group homes and residential child care facilities, clothing expenses, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. The Federal government will reimburse the State for 50 percent to 83 percent of the costs. The State is responsible for the balance;

https://www.ssa.gov/OACT/ssir/SSI14/SSAB_Statement.html (emphasis supplied) (last viewed 1/5/2018).

The term “foster care maintenance payments” means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, reasonable travel to the child’s home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

There is no federal minimum nor maximum foster care maintenance payment rate. Congressional Research Service, *Child Welfare: A Detailed Overview of Program Eligibility and Funding for Foster Care, Adoption Assistance and Kinship Guardianship Assistance under Title IV-E of the Social Security Act* (October 26, 2012) at 17.

Third, Section 672(b)(2) limits payments to child-care institutions to the items specified in § 675(4)(A), *ante*. Based on this Division’s experience in the 2014 *Miracle Hill Ministries* protest and appeal, “the reasonable cost of administration and operation of [a child-care institution]” is a frequent source of disagreement between DSS and those institutional service providers. In fact, as discussed *post*, DSS’s determination of those costs is a basis of most of these protests.

Finally, the state plan must provide a method for periodically reviewing the payment rate to assure its continuing appropriateness. 42 U.S.C. § 671(a)(11). The Secretary has promulgated regulations providing for this review:

In meeting the requirements of section 471(a)(11) of the Act [42 U.S.C. § 671(a)(11)], the title IV–E agency must review at reasonable, specific, time-limited periods to be established by the agency:

(1) The amount of the payments made for foster care maintenance and adoption assistance to assure their continued appropriateness....

45 C.F.R. § 1356.21(m). No particular method, either for the initial determination or review of the maintenance payment rate, is specified.³

³ On behalf of some protesters, Palmetto Association for Children & Families argued federal law requires the state must have some articulable method for reviewing the appropriateness of maintenance payments. In support it points

Several years ago the Attorney General opined about a different requirement of the Child Welfare Act:

When a state accepts financial assistance from the federal government, the state is bound by any "conditions" which attach to the expenditure of the funds.... For example, participation by a state in the AFDC program is voluntary, but if a state chooses to participate it must comply with the requirements of the Social Security Act and the regulations promulgated thereunder.... Further, §671(b) provides for either discontinuance or reduction of payments to a State in the event that an approved State plan no longer complies with the requirements of §671(a) or, through its administration, there is substantial failure to comply with the provisions of the plan. Thus, as indicated by clear statutory language and well-established case law, compliance with the Federal Act is essential if the State Department of Social Services (DSS) wishes to avoid the risk of a discontinuance or reduction of funding for this program.

S.C. Att’y Gen. Op. of August 8, 1986, at *2, 1986 WL 289816 (internal citations omitted). No party claims that the State’s plan has not been approved by the Secretary, or that it no longer complies with 42 U.S.C. § 671(a). In fact, both Southeastern and New Foundations admit that the State has used the same methodology to determine and review payment rates since at least 2015. Neither alleges that the State has failed to properly administer the plan. Essentially, they complain that the plan approved by the federal government includes an unreasonable cost methodology. The CPO is unconvinced that a government contractor’s opinion concerning the cost methodology is a reason to question—much less invalidate—the Secretary’s continuing approval of South Carolina’s plan.

Even if there were some merit to the Title IV-E claims, the Procurement Code offers no remedy. According to the Attorney General, the consequence of plan non-compliance is the “discontinuance or reduction of funding for this program.” There have been successful court challenges to the level of maintenance payments. *E.g.*, *California Alliance of Child and Family*

to two federal decisions: *Missouri Child Care Ass’n v. Martin*, 241 F.Supp.2d 1032 (W.D. Mo. 2003), and an unreported district court order, *Foster Parents Ass’n of Washington State v. Quigley*, 2014 WL 3513338 (W.D. Wash., July 14, 2014). Both actions sought relief under 42 U.S.C. § 1983. Neither challenged a state’s *procurement* of foster care services. The *Quigley* decision denied relief to the organizational plaintiff, by all indications a similar organization to Palmetto. For the reasons discussed in this section and in part 4, *post*, the CPO is unpersuaded that either of these authorities change the result.

Services v. Allenby, 589 F.3d 1017 (9th Cir. 2009) (finding private right of action exists under the Child Welfare Act); *C.H. v. Payne*, 683 F.Supp.2d 865 (S.D. Ind. 2010) (granting relief based on 42 U.S.C. § 1983); *cf. Pee Dee Health Care, P.A. v. Sanford*, 509 F.3d 204 (4th Cir. 2007) (acknowledging in dicta that enforcement of Medicaid reimbursement may be asserted under 42 U.S.C. § 1983); *but see Hensley v. Koller*, 722 F.3d 177 (4th Cir. 2013) (decrease in adoption assistance payments under South Carolina law did not violate federal right to individualized adoption assistance granted by Child Welfare Act). However, the CPO can find no judicial or administrative decision where a contractor has successfully challenged a *procurement action* based on Title IV-E.

For the foregoing reasons the second issue of protest by Southeastern Children's Home, and the entire protest of New Foundations Home for Children, are dismissed.

3. Scope of Work Issues

Excalibur Youth Services, LLC and Avalonia Group Homes, Inc. filed nearly identical protests. Both allege:

The Solicitation states: "These concepts may transform the use of residential care to a short term, **treatment-focused model**, to be utilized for children/youth who cannot be safely and adequately served in a supported family setting." The solicitation states that the service model is a treatment focused model. Residential treatment is not permitted in a DSS licensed group home in South Carolina, only in a DHEC licensed RTF. Therefore, if part of the design cannot be provided by the group home, the service cannot be delivered. See R. 61-103, RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN AND ADOLESCENTS....

The quoted language (without the bolded type) appears in one of the introductory paragraphs of the scope of work. This paragraph was clearly intended to be generally descriptive of the program. The solicitation seeks group care at three levels. The description of Level 1 placements does not include children with a mental health diagnosis. Solicitation, p. 15. Level 2 placements include children with relational or behavioral problems. That description includes:

In some cases a child/youth may not have a mental health diagnosis but may experience fear, anxiety, hyperactivity, moodiness, withdrawal and/or impulsivity.

Id. at 16. Level 3 placements involve children with more serious problems:

Level 3 services are highly structured residential services having intensive staff supervision and programming for children/youth who are experiencing relational or behavioral problems and are not able to function successfully in a less restrictive group care setting. A child/youth in this level of care may present a significant mental health disorder, and is impaired in social, educational, familial and occupational functioning.

Id. The Level 3 services include coordination and management of required medical care, but do not require the contractor to treat children for mental illness.

S.C. Code Ann. Reg. 61-103 governs licensing by the Department of Health and Environmental Control of Residential Treatment Facilities for Children and Adolescents. Section 101.00 of the regulation defines it as:

A facility operated for the assessment, diagnosis, treatment and care of two (2) or more children and/or adolescents in need of mental health treatment....

While a DHEC-licensed treatment facility may properly provide Level 3 services, those services do not require licensure by DHEC. Excalibur Youth Services, LLC and Avalonia read into the solicitation a requirement that is not there. This protest issue is denied

They also protest:

Further, for those facilitates *[sic]* that are licensed over 16 beds, Medicaid cannot be accessed for any child for any healthcare service due to the Institution for Mental Diseases (IMD) rule, promulgated by the Centers for Medicare and Medicaid (CMS).

Similarly, Windwood Farm Home for Children protests:

My last concern is the wording of the type of child that will be placed in a level 3 home. Although the scope of what we will do is workable; the wording for many level three providers suggests a possible violation of the IMD rule.

The Centers for Medicare and Medicaid Services website describes the IMD (institutions for mental diseases) exclusion:

What is the Medicaid IMD exclusion?

The IMD exclusion prohibits Medicaid from making payments to IMDs for services rendered to Medicaid beneficiaries aged 21 to 64.⁴

The solicitation seeks services for children and youth. Persons aged 21 to 64 are not children or youth. This protest issue is denied.

Avalonia also protests:

Though a block is presented for a level 4 facility, the level 4 is not found in the contract and is the level of care, at which Avalonia Group Homes, Inc., group home operated. This level of care should be provided and the rate should be reasonably calculated.

The levels of care covered by this solicitation reflect the agency's business judgment regarding what services it requires. As the Panel wrote several years ago:

The Chief Procurement Officer properly dismissed a protest ground alleging that purchasing bio-diesel fuel was not in the State's best interests; the determination of what the State needs is up to the State, and the Procurement Review Panel lacks authority to determine whether an agency should purchase a certain item.

In Re: Appeal of Petroleum Traders, Panel Case No. 2006-8; *see Protest of GTE Vantage, Inc.*, Panel Case No. 1992-19 ("...vendors may not rewrite specifications to tell the State what it needs."). This issue of protest alleges no violation of the Code and is dismissed.

4. Fixed Price

All protesters complain that the fixed price is insufficient to cover the cost of providing the services. Excalibur and Avalonia both claim:

The daily rate allowance of \$176.80 is insufficient to provide the care described in the Solicitation. The amount is the continuing rate that intensive level group homes have received over many years. It is insufficient to cover the costs and to provide the services that DSS describes in the current solicitation. The scope of

⁴ <https://innovation.cms.gov/initiatives/Medicaid-Emergency-Psychiatric-Demo/faq.html> (last viewed April 20, 2018).

work is substantially increased without any increase in daily rate. The current rate is not sufficient for the scope of work currently in operation.

Avalonia also protests:

Further, the historical daily rate for Avalonia Group Homes, Inc., was substantially in excess of the written rate in the Solicitation.

Helping Hands, Inc., protests:

The current FPB solicitation involves expansion of the provider scope of work without an increase in compensation.... In addition, providers will be required to provide additional days' notice before requiring that a resident be removed (page 31). In contrast to that, provisions in the FPB will effectively exempt the state agency from the notice requirement, but no allowance is made for the providers' loss of income. Further, the FPB requires that providers continue to accept placement of children without creating a system for ensuring some baseline census numbers in order to make operations economically viable.

Southeastern protests two aspects of the State's pricing:

There is unquestionably an increase in the deliverables found in the "scope of work" in solicitation #5400013556 without an increase in the daily rate for Level 1.

In addition, we are protesting the unexcused absences, in the scope of work found on page 20 of the fixed price bid document, as it relates to giving the Department of Social Services a 10 business day notice should a provider decide to dismiss a child from its program found on page 31. The unexcused absence section states that "DSS will not reimburse the Provider for full day UNEXCUSED absence" while on page 31 under the discharge area it requires both the Providers and DSS to give a 10 business day notice prior to discharging a resident. This appears to mean that a Provider cannot discharge a runaway or a child that is incarcerated for up to 10 days and that same child's space must be held for 10 days without any reimbursement per the statement on page 20. This is an increase in the scope of work without a rate adjustment to compensate for the additional cost of not being able to fill a vacated slot for 10 days.

Finally, Windwood Farm Home for Children protests:

The scope of work in this solicitation has dramatically changed without consideration of the increase in the number of staff that will be required to

maintain a safe and secure environment and the costs that will be incurred to provide this service.

This is a fixed price solicitation in which the State sets the maximum price it is willing to pay for the services being solicited and any responsible bidder willing to participate at or below that price may be awarded a contract. The Panel has long recognized that “[f]unding availability is an inherent prerequisite to any government procurement.” *In Re: Protest of Florence Crittendon Home*, Panel Case 1983-18. On further review, then-Circuit Judge John Hamilton Smith wrote:

The Court recognizes that in cases such as this where the vendor of services is funded in large part through government funds, the unavailability of full funding may place the vendor in the situation of having to take what the government offers. However, any problems experienced by FCH as a result of the procurement in question were not problems with the procurement process, but with the nature of FCH's necessary reliance on government funding even in a lean year. *Even though FCH provides an obviously worthwhile service, its funding needs and the needs of its clients do not translate into a requirement that the State must provide it with everything it proposes.* The RFP told prospective bidders all they needed to know to bid intelligently, and the award was based on the stated factors and the factors which inhere in any government procurement.

In Re: Protest of Florence Crittendon Home, Panel Case 1983-18(C) (emphasis supplied).

Section 11-35-1525, Competitive fixed price bidding, provides:

(2) Fixed Price Bidding. The purpose of fixed price bidding is to provide multiple sources of supply for specific services, supplies, or information technology based on a preset maximum price which the State will pay for such services, supplies, or information technology.

(4) Pricing. The State shall establish, before issuance of the fixed price bid, a maximum amount the State will pay for the services, supplies, or information technology desired.

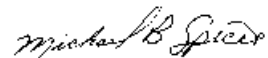
(7) Award. Award must be made to all responsive and responsible bidders to the state's request for competitive fixed price bidding.

The State has complied with the requirements for this fixed price bid. If the protesters do not wish to perform at the State's maximum price, they need not respond to the solicitation. This issue of protest fails to state a claim for which relief may be granted and is dismissed.

DECISION

For the reasons stated above the protests of Ecalibur Youth Services, LLC, Southeastern Children's Home, Inc., Avalonia Group Homes, Inc., Palmetto Association for Children and Families, Helping Hands, Inc., Windwood Farm Home for Children, Inc., and New Foundations Home for Children, Inc. are dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

July 7, 2017

Excalibur Youth Services, LLC
P.O. Box 968
Travelers Rest, South Carolina 29690

Chief Procurement Officer
SC Materials Management Office
Suite 600
1201 Main Street
Columbia, South Carolina 29201

by email to protest-mmo@mmo.state.sc.us
and by U.S. Postal Service to the above
address

Protest: Group Care for Children
Solicitation 5400013556
Excalibur Youth Services, LLC
Vendor # 7000043947

To the Above Officer:

Excalibur Youth Services, LLC protests the above Solicitation by the South Carolina Department of Social Services. Excalibur Youth Services, LLC is currently an intensive group home at 5321 Old Buncombe Road, Greenville, S.C.

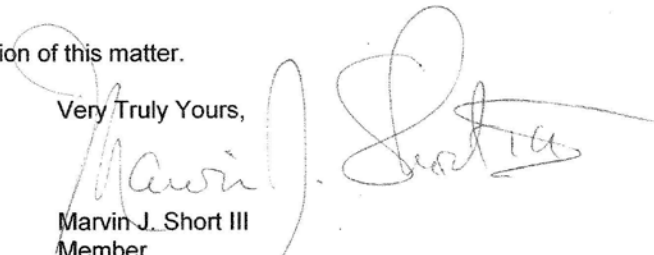
The Solicitation states: "These concepts may transform the use of residential care to a short term, **treatment-focused model**, to be utilized for children/youth who cannot be safely and adequately served in a supported family setting." The solicitation states that the service model is a treatment focused model. Residential treatment is not permitted in a DSS licensed group home in South Carolina, only in a DHEC licensed RTF. Therefore, if part of the design cannot be provided by the group home, the service cannot be delivered. See R.61-103, RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN AND ADOLESCENTS. Further, for those facilities that are licensed over 16 beds, Medicaid cannot be accessed for any child for any healthcare service due to the Institution for Mental Diseases (IMD) rule, promulgated by the Centers for Medicare and Medicaid (CMS).

The daily rate allowance of \$176.80 is insufficient to provide the care described in the Solicitation. The amount is the continuing rate that intensive level group homes have received over many years. It is insufficient to cover the costs and to provide the services that DSS describes in the current solicitation. The scope of work is substantially

increased without any increase in daily rate. The current rate is not sufficient for the scope of work currently in operation.

I thank you for your kind consideration of this matter.

Very Truly Yours,



Marvin J. Short III
Member
Excalibur Youth Services, LLC



child abuse prevention association
post office box 531 • beaufort • sc • 29901
phone 843.524.4350 • fax 843.525.0070 • kids@capabeaufort.org
www.capabeaufort.org

July 10, 2017

Chief Procurement Officer
SC Materials & Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Group Care for Children Fixed Price Bid (solicitation #5400013556)

Dear Sir or Madam:

With this letter, the Child Abuse Prevention Association is filing a protest of the Group Care for Children Fixed Price Bid (Solicitation #5400013556).

It appears the Fixed Price Bid has greatly expanded the scope of work required from providers while paying us the same rate we are currently receiving. The intake requirements coupled with the family engagement requirements on page 17 appear to be particularly burdensome and expansive. While providers can schedule many of those intake services, agencies like Department of Mental Health, will require a DSS caseworker present. We have no ability to insure compliance with this section of the Bid.

If you have any questions or need to reach me, our agency's telephone address is listed above or you can email me at Christina@capabeaufort.org.

Thank you for your consideration of our protest and reasoning.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Christina Wilson', is written over a light blue horizontal line.

Christina Wilson
Executive Director



The Child Abuse Prevention Association (CAPA), a United Way agency
accredited by the Council on Accreditation, serving children and families
of Beaufort and surrounding counties for over 30 years.



July 10, 2017

Chief Procurement Officer
SC Materials & Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Group Care for Children Fixed Price Bid (solicitation #5400013556)

To whom it may concern:

With this letter, Southeastern Children's Home is filing a protest of the Group Care for Children Fixed Price Bid (solicitation #5400013556).

There is unquestionably an increase in the deliverables found in the "scope of work" in solicitation #5400013556 without an increase in the daily rate for Level 1. We are protesting based on these increases in deliverables. The insurance limits have been raised in several areas including, but not limited to, workers compensation limits and the employer liability limits. Security risks coverage is new in the contract and very costly. These can be found on pages 43, 44, and 45 of the fixed price bid. The training requirements have increased as well as the pre-employment training requirements. Again, each of these deliverable increases come with a price tag but with no increase in the daily rate.

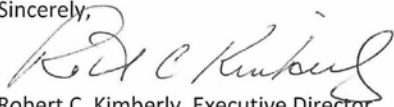
We are further protesting based on the fact that it is our understanding that the federal guidelines call for a rate setting methodology when establishing a daily rate paid by the state to provide for abused and neglected children and their out of home care needs. We understand that a methodology was established in 2015 to set the new Level 1 and Level 3 rates. However, a cost report has been submitted since that time which was not then used to establish the rate which can be found on page 33 of the fixed price bid document. This protest is based on Level 1 rates only.

In addition, we are protesting the unexcused absences, in the scope of work found on page 20 of the fixed price bid document, as it relates to giving the Department of Social Services a 10 business day notice should a provider decide to dismiss a child from its program found on page 31. The unexcused absence section states that "DSS will not reimburse the Provider for full day UNEXCUSED absence" while on page 31 under the discharge area it requires both the Providers

and DSS to give a 10 business day notice prior to discharging a resident. This appears to mean that a Provider cannot discharge a runaway or a child that is incarcerated for up to 10 days and that same child's space must be held for 10 days without any reimbursement per the statement on page 20. This is an increase in the scope of work without a rate adjustment to compensate for the additional cost of not being able to fill a vacated slot for 10 days.

I appreciate your considering this protest and what we believe are legitimate issues. Should you need to reach me please feel free to call at 1-864-439-0259.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert C. Kimberly".

Robert C. Kimberly, Executive Director
Southeastern Children's Home

July 7, 2017

Avalonia Group Homes, Inc.
P.O. Box 968
Travelers Rest, South Carolina 29690

Chief Procurement Officer
SC Materials Management Office
Suite 600
1201 Main Street
Columbia, South Carolina 29201

by email to protest-mmo@mmo.state.sc.us
and by U.S. Postal Service to the above
address

Protest: Group Care for Children
Solicitation 5400013556
Avalonia Group Homes, Inc.
Vendor # 7000029131

To the Above Officer:

Avalonia Group Homes, Inc. protests the above Solicitation by the South Carolina Department of Social Services. Avalonia Group homes, Inc., is licensed for a group home at 213, Hart Cut Road, Marietta, S.C.

The Solicitation states: "These concepts may transform the use of residential care to a short term, **treatment-focused model**, to be utilized for children/youth who cannot be safely and adequately served in a supported family setting." The solicitation states that the service model is a treatment focused model. Residential treatment is not permitted in a DSS licensed group home in South Carolina, only in a DHEC licensed RTF. Therefore, if part of the design cannot be provided by the group home, the service cannot be delivered. See R.61-103, RESIDENTIAL TREATMENT FACILITIES FOR CHILDREN AND ADOLESCENTS. Further, for those facilities that are licensed over 16 beds, Medicaid cannot be accessed for any child for any healthcare service due to the Institution for Mental Diseases (IMD) rule, promulgated by the Centers for Medicare and Medicaid (CMS).

The daily rate allowance of \$176.80 is insufficient to provide the care described in the Solicitation in a level 3 group home. The amount is the continuing rate that intensive level group homes have received over many years. It is insufficient to cover the costs and to provide the services that DSS describes in the current solicitation. The scope of

work is substantially increased without any increase in daily rate. The current rate is not sufficient for the scope of work currently in operation.

Further, the historical daily rate for Avalonia Group Homes, Inc., was substantially in excess of the written rate in the Solicitation. Though a block is presented for a level 4 facility, the level 4 is not found in the contract and is the level of care, at which Avalonia Group Homes, Inc., group home operated. This level of care should be provided and the rate should be reasonably calculated.

Line Number Quantity Unit of Measure Rate
0004 1.000 Day
Product Catg.: 95259 - Human Services (Not Otherwise Classified)
Item Description: Group Care for Children Level 4

I thank you for your kind consideration of this matter.

Very Truly Yours,


Marvin J. Short III
President
Avalonia Group Homes, Inc.



July 7, 2017

Delbert H. Singleton, Jr., Division Director
SC Materials & Management Office/ Division of Procurement Services
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Group Care for Children Fixed Price Bid (solicitation #5400013556)

To Mr. Singleton:

With this letter, the Palmetto Association for Children and Families (PAFCAF) is filing an official protest of the Group Care for Children Fixed Price Bid (solicitation #5400013556) on behalf of our members, group care facilities across South Carolina. We envisioned that given our longstanding partnership in serving South Carolina's children, we would have been offered an opportunity to be involved in the development of this fixed price bid, therefore avoiding the need to file a protest. The South Carolina Procurement Code imposes within each contract, an "obligation of good faith in its *negotiation*, performance, or enforcement." S.C. Code Ann. § 11-35-30 (emphasis added). Unfortunately, an opportunity for PAFCAF's participation was not provided. As a result, we find that there is no good option outside of filing this protest in an attempt to be at the table with the SC Department of Social Services (SCDSS) so that, together, we might develop an appropriate fixed price bid that best meets the needs of our state's children in foster care.

The scope of work outlined in this Fixed Price Bid has increased without an increase in rate for Level 1 and Level 3 group homes. The growing number of children in foster care, the demand for quality group care, and inflation requires up-to-date reimbursement rates that allow providers to offer safe, quality care. As providers, we welcome the opportunity to provide additional services to the children in our care. However, in order to provide these additional services with the highest level of quality and with strong outcome measures in mind, we feel that providers must be paid for these services. The federal law and mandates under which these services are provided, and by which South Carolina receives federal funding, requires SCDSS to have a reasonable cost methodology by which the reimbursement rate for providers will be determined. *See Cal. Alliance of Child and Family Services v. Allenby*, 589 F.3d 1017, 1022 (9th Cir. 2009); *C.H. v. Payne*, 683 F.Supp.2d 865, 880 (S.D. Ind. 2010). Over the last several years of the previous contract under which these foster care services were provided, however, SCDSS waived collecting cost data from group care providers. The methodology used by the State to determine an appropriate foster care maintenance per diem must take into consideration the actual costs of providing the enumerated items. Without this core cost data, the uniform maximum reimbursable rate set by SC Department of Health and Human Services (SCDHHS) for each provider is arbitrary and has no basis in fact. This is in contravention to both federal law, and to the Solicitation itself which purports to reimburse providers for the costs of care defined as "the cost of feeding, supervising, housing, transporting and otherwise providing direct care for the child/youth" and for



other state services defined as activities such as “training, monitoring and supervision, administering cost and other related non-treatment activities”. (Solicitation, page 32). The maximum rate stated in the solicitation is internally inconsistent with the services required.

Note: While Level 1 and Level 3 group homes received a rate increase in 2016, that increase was based on 2012 financial reports and cost reports. The rates listed in this current fixed price bid (which extend through 2020) are outdated and do not consider the rising costs of housing and providing services to the rising number of our state’s foster children (page 33).

The following items outlined below include, but are not limited to, Scope of Work concerns PAFCAF and our providers have with the current fixed price bid as released on June 23, 2017:

1. The Scope of Work indicates that group home providers will now be responsible for transportation to family visits, medical appointments, schools, etc. (page 30). Additionally, providers will be required to coordinate with schools on continuing education placement and coordinate with DSS on placement supervision and other community services – after the child has been discharged from the provider’s facility (page 31).
2. The outcomes measures outlined on page 32 indicate that providers will now be responsible for sibling visits, family visits and correct placement of children in therapeutic foster care.
3. On page 15, the Scope of Work states that providers must have the ability to deliver services to pregnant teens and teen mothers with children. This will mean significant changes for group homes to provide the best care and most appropriate care for mother and child.
4. Page 17 states that group homes will be required to “assisting the child/youth’s family in resolving problems that necessitated the child/youth’s removal from the home” and provide “assistance with transitioning the child/youth to an adoptive or permanent family home.”

Several other items should be noted as well:

- The fixed price bid indicates that Group Care is not to be used for respite care. However, respite care has been mentioned by DSS as one of the service options for group homes transitioning their services (page 3).
- The Scope of Work adds 32 hours of specific trainings that must be completed prior to an employee working one on one with a child. For many providers, this will create the need for an additional staff person dedicated to monitoring and managing a provider’s training program and onboarding as well as additional costs for increased trainings (page 28).
- While we agree that Information Security is critical, the requirements outlined in current proposed contract will potentially be costly for providers (page 34 and Appendix L). At this point in time, neither



PAFCAF nor our providers have had the opportunity to fully research the costs, possible contractors or an implementation time frame.

We wholeheartedly agree with providers being involved in more aspects of a child's life and with efforts being made to coordinate a child's critically needed time with family and doing what is in the best interest of children and families. However, these added responsibilities could require group homes to:

- hire additional staff
- train staff on family visits and the visitation process
- adjust their facilities to allow for family/sibling visits on site
- train staff on therapeutic placements and placement supervision
- train staff to manage educational transitions and education placement after discharge
- purchase additional vehicles and increase budgets for gas and vehicle maintenance
- adjust facilities and program services to accommodate pregnant teens and teen mothers and their children
- provide transitional services to children going to an adoptive home or permanent family home. The fixed price bid does not indicate what those services are or what professional qualifications will be required for staff.

The Palmetto Association for Children and Families and its members have a longstanding relationship with the SC Department of Social Services. Our collective goal is to produce positive outcomes for South Carolina's children and their families. Our hope is that this protest will produce discussions and considerations for the most effective way for all parties to accomplish that goal. In the alternative to a compromise resolution, PAFCAF respectfully requests that SCDSS be required to collect relevant cost data from providers and to set a reimbursement rate reflecting the actual, reasonable costs of care.

Sincerely,

Erin G. Hall
Chief Executive Officer

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF RICHLAND)

BEFORE THE PROCUREMENT REVIEW BOARD

IN THE MATTER OF:

Miracle Hill Ministries,

Protestant,

MEMORANDUM

vs.

South Carolina Department of Social Services,

Solicitor.

To the Chief Procurement Officer, Materials Management Office:

The purpose of this email is to file an official protest in regard to Solicitation Number 5400013556 and any Contract issued pursuant thereto and incorporating the terms discussed below.

Reasons for the Protest

Miracle Hill Ministries ("MHM") is a current contract holder under the Fixed Price Bid included in Solicitation Number 5400002885, and has been a SCDSS contractor since the early 1990s. Miracle Hill Ministries is a not-for-profit provider of residential services for children in the care of the South Carolina Department of Social Services. The terms of Solicitation 5400013556, however, include certain non-discrimination requirements that infringe upon and inhibit MHM's religious liberties and free speech rights guaranteed by the state and federal constitutions, binding precedent of the United States Supreme Court, and South Carolina statutory law. *See, e.g.*, Solicitation 5400013556 at 23, 26, and 29 (prohibiting contractors from discriminating on the basis of creed and sexual orientation, and compelling contractors to adopt and convey the government's message related to nondiscrimination on the basis of sexual orientation). We contend there are at least four bases to protest this contract solicitation:

1. To the extent Solicitation 5400013556 purports to restrict or penalize MHM's ability to make employment decisions related to employees whose roles include religious or spiritual teaching, counseling, discipleship, and formation, such restrictions or penalties violate MHM's rights under the United States Constitution, Amend. I, as recognized by the Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Employment Opportunity Commission*, 565 U.S. 171 (2012), and under the South Carolina Constitution, Art. I § 2.
2. To the extent Solicitation 5400013556 purports to restrict or penalize MHM's ability to make any personnel screening, selection, training, licensing, supervision, and/or employment decisions consistent with MHM's religious beliefs, such restrictions or

penalties violate the South Carolina Religious Freedom Act, S.C. Code Ann. §§ 1-32-10 to -60.

3. To the extent Solicitation 5400013556 would penalize a religious entity who could not in good conscience comply with the Solicitation's demands by withholding from that religious entity an otherwise available public benefit, such penalty or withholding violates the religious entity's rights under the United States Constitution, Amend. I, as recognized by the Supreme Court in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, __ U.S. __, __ S. Ct. __ (June 26, 2017).
4. To the extent Solicitation 5400013556 purports to require MHM to convey to its staff a message with which MHM may disagree on sincere religious grounds, such requirement constitutes compelled speech in violation of MHM's rights under the United States Constitution, Amend. I, and the South Carolina Constitution, Art. I § 2.

Potential Remedies:

1. SCDSS could remove the references to creed and sexual orientation in the above-referenced non-discrimination provisions. (MHM has no objection to and affirms the remaining aspects of the non-discrimination provisions related to sex, age, race, color, national origin, and physical handicap.)
2. SCDSS could modify the above-referenced non-discrimination provisions to make explicit that contractors may not engage in *impermissible* or *illegal* discrimination on the basis of the enumerated factors.

As you can see, the Solicitation as currently worded puts MHM to a difficult choice: either abandon its sincerely held religious beliefs in order to continue serving children in need or hold fast to its beliefs and be forced to abandon the children whom MHM feels a spiritual duty to serve.

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Miles E. Coleman
SC Bar No. 78264
E-Mail: miles.coleman@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
Tel: (803) 799-2000

Counsel for Miracle Hill Ministries

July 10, 2017
Columbia, SC



July 10, 2017

Chief Procurement Officer
SC Materials & Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Group Care for Children Fixed Price Bid (solicitation #5400013556)

To whom it may concern:

With this letter, Tamassee DAR School is filing a protest of the Group Care for Children Fixed Price Bid (solicitation #5400013556).

Our concerns causing this protest are the additional requirements outlined in the Scope of Work without an additional rate increase to help offset the additional cost burden for providers. I would note the following specific changes:

1. The new requirement for Cyber Coverage. While we understand the reasoning for this requirement, it does create additional cost for the provider. An initial estimate from our carrier indicates an additional cost of several thousand dollars per year.
2. The staff/client ratios outlined for sleeping hours (p. 19) creates an additional cost for a campus-based program like Tamassee DAR School. This new fixed price bid does not provide the same exceptions to 2 staff in each living setting during sleeping hours that was allowed under the current contract. The current contract actually allow for two options as exceptions, (1) an electronic monitoring system that ensures the staff are notified immediately when there is any movement of children, or (2) an awake staff that rotated between living settings.
3. The new fixed price bid seems to require acceptance of teen girls that are pregnant or teen girls placed with their children. The requirements for serving this population are not clearly outlined. Teen girls that are pregnant may require additional medical oversight at a cost to the provider. I would also assume serving the teen mom with a child would require the higher staffing ratios of placement of children under the age of six, and if the teen's child is not in custody, the organization would not be receiving the daily contract rate for the baby.
4. This new fixed price bid specifies that transportation to school is the responsibility of the provider. While this requirement was included in the prior FPB, it was assumed the child would be enrolled in the local school for the organization so that transportation may be through normal school bus transportation, or was at least in the local community. The exceptions in this new FPB noted for DSS assistance do not include the new federal requirement for maintaining children in the school of origin when in their best interest. The federal requirement assigns the responsibility for assuring

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- the required transportation be negotiated between the child welfare agency (DSS in SC) and the State's Department of Education. Assigning this transportation responsibility to providers through this contract would be an additional cost in both vehicle and staffing expenses.
5. The outcome measures for family visits require visits twice per month. Again, providers are assigned responsibility for this transportation with no exceptions noted for placement of children from areas requiring extensive travel for these visits or in situation where the parents have moved out of the area. (p. 32/30)
 6. The transportation exceptions where DSS will assist seem to only apply to levels 2 and 3 as the pre-approval requirement noted does not mention level 1. This would result in additional transportation costs for level 1 providers.
 7. Components of the outcome measures (p. 32) are beyond the scope of what the provider is able to assure (bullets 3 & 4 particularly). If we are responsible for assuring these outcomes we would have to be doing much of the case management work currently provided by DSS. There is not a case management rate available for providers.
 8. It appears emergency placement services are required from all providers. With the "no reject" policy, we would have to staff and take other measure to serve all levels of care. Additionally, the statement that the "Provider must retrain the child/youth based on a viable written discharge plan and/or discharge is planned in cooperation with SCDSS" reads as a "no discharge" clause for these placements. If the discharge criteria outlined on page 31 does not apply, then a level one provider could have a higher level of placement for a considerable amount of time. While there is the additional rate for emergency placement for 14 days, I am concerned that that is not sufficient for a level 1 provider to take the necessary measures for a placement at any time that may result in a long-term stay beyond the 14 days.
 9. The additional pre-service training requirements for staff also represent an additional cost.
 10. The State of South Carolina (the Department of Social Services and/or the Materials and Management Office) has not clearly articulated the cost methodology used to determine the rates in this FPB. I further understand that once the new FPB goes into effect, there will not be planned rate reviews/adjustments for a minimum of at least three years. This creates concern that there is not an initial rate adjustment, nor a planned rate review related to the above mentioned additional/expanded requirements.

Tamassee DAR School is proud to be a partner with the SC Department of Social Services and enjoys good relationships with our local partners and state level personnel. We also fully understand the reasons for the new direction of our SC Child Welfare system and we seek to transition toward providing additional/new services that are currently more supportive of this philosophical shift. In order to be successful, though, we must have an environment of true transparency and partnership, where we work in cooperation to design services that best serve the children and families of our great state of SC.

Thank you for your consideration of our protest and for your service to South Carolina.

Sincerely,



Lori Ann Bailey, CEO
Tamassee DAR School
lorib@tdarschool.org



Helping Hands, Inc.

July 7, 2017

Chief Procurement Officer
SC Materials & Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Group Care for Children Fixed Price Bid (Solicitation #5400013556)

To whom it may concern:

With this letter, HELPING HANDS, INC is filing a protest of the Group Care for Children Fixed Price Bid (Solicitation #5400013556) based on several factors. The current FPB solicitation involves expansion of the provider scope of work without an increase in compensation. It also creates undue burden through an increase in required initial training hours for new staff (page 28) without funding. In addition, providers will be required to provide additional days' notice before requiring that a resident be removed (page 31). In contrast to that, provisions in the FPB will effectively exempt the state agency from the notice requirement, but no allowance is made for the providers' loss of income. Further, the FPB requires that providers continue to accept placement of children without creating a system for ensuring some baseline census numbers in order to make operations economically viable.

If you have any questions or require additional information, please contact me using the information listed below. Thank you for your consideration of our protest and reasoning. With kind regards, I am

Sincerely Yours,

Carmen L. Landy, MPA
Chief Executive Officer





July 10, 2017

Chief Procurement Officer
SC Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

RE: Group Home for Children Fixed Price Bid Solicitation # 5400013556

To whom it may concern:

With this letter, Windwood Farm Home for Children, Inc. is filing a protest of the Group Home for Children Fixed price Bid under solicitation #5400013556.


The scope of work in this solicitation has dramatically changed without consideration of the increase in the number of staff that will be required to maintain a safe and secure environment and the costs that will be incurred to provide this service.

Specifically,

- All critical incidents must be signed off by a Licensed Independent Practitioner. Group homes have never been required to employ a LIP or have a LIP on contract.
- Adding cyberterrorism insurance. This has never been required before.
- Increasing the number of events contained on the critical incident report to include "attempt to contact prohibited persons". It would be impossible to comply with this mandate as children we serve go off campus to school and have access to computers, social media, and cell phones while there. Also children have jobs and we cannot "tail" them 24 hours a day.
- *Provider must agree to accept emergency placements* which will automatically increase the need for additional direct care staff coverage. \$75.00 a day only provides \$3.12 an hour for staff salaries. Our basic direct care staff rate is \$12.00 an hour.
- Additional time required to complete the medical/dental encounter form. I can't mandate that a health care provider complete the form.
- Arranging for post discharge services is always done but I can't mandate that DSS or the next provider follow my recommendations. The primary caretaker should arrange for those services. I do agree we can offer suggestions, but it's wrong to set up appointments and waste a time slot at a practitioner's office if no one is going to follow through with the appointment.

- There appears to be much more case management required that would necessitate adding an extra case management position.
- My last concern is the wording of the type of child that will be placed in a level 3 home. Although the scope of what we will do is workable; the wording for many level three providers suggests a possible violation of the IMD rule.

We are very interested in providing this level of care to children involved with the child welfare system and hope the concerns expressed by providers will be worked out in the near future.

Sincerely,

Deborah D. McKelvey, MA
Executive Director
mckelvey@windwoodfarm.org
843-991-0681



July 10, 2017

Chief Procurement Officer

SC Materials & Management Office

1201 Main Street, Suite 600

Columbia, SC 29201

RE: Group Care for Children Fixed Price Bid (solicitation #5400013556)

To whom it may concern:

With this letter, New Foundations Home for Children is filing a protest of the Group Care for Children Fixed Price Bid (solicitation #5400013556). This protest is related to services that will be rendered and reimbursement of expenses.

Reasons for the Protest:

New Foundations Home for Children, Inc. (New Foundations) is a current contract holder under the Fixed Price Bid included in Solicitation Number 5400002885, Statewide Residential Services for Children, and has striven to meet contract requirements, even though the cost to do so has exceeded the reimbursement received from SCDSS. We hoped the replacement FPB (5400013556) would have an increased rate of reimbursement covering allowable costs. However, the rate is the same as in the previous contract, and, furthermore, there are additional service elements in this FPB such as increased training requirement hours (P.28 and 29), increased transportation requirements for family visits (this requires additional personnel and actual transportation costs P. 30), and additional Outcome Data Tracking and Reporting (P32).

New Foundations enters these contracts in good faith understanding SCDSS will collect cost data to develop new reimbursement rates for providers. Providers were informed that DSS was not requiring cost reports in January 2016 and 2017. Providers anticipated SCDSS would revise reimbursement rates in the new FPB. All providers were required to submit data in January 2015 based on the most recent fiscal year completed and for which audited financial statements were available. For New Foundations, that

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was our fiscal year of 2013/2014. This means that Solicitation #5400013556 is based on cost factors from 2013/2014.

As a result of this, we contend there are at least four (4) legitimate reasons to protest the Scope of Work and the reimbursement rates for these services in FPB Solicitation #54000d13556. They are:

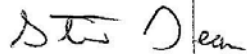
1. SCDSS will fail to meet its responsibility under Title IV E to reimburse providers for the full cost incurred in providing required services under the proposed new solicitation with the same reimbursement structure.
2. This Solicitation fails to meet South Carolina Procurement Code which requires a state agency to follow Federal law when receiving/dispersing federal funds – S.C. Code Ann. 11-35-40(2) and S.C. Code Ann. 11-35-40(3)
3. The proposed rate of \$176.82 per day for Level 3 Group Care providers has no reasonable cost methodology behind it. Therefore, there is no basis to use it in calculating this proposed rate or to serve as a basis of a new Cost Methodology. SCDSS has not offered an explanation of how it arrived at the \$176.82 reimbursement rate.
4. SCDSS failed to establish a reasonable cost methodology to follow in proposing a reimbursement rate for providers. The SCDSS Cost Methodology is not reasonable and does not follow sound statistical methods. One key component of the past methodology, using a provider's licensed beds instead of occupied beds in calculating daily costs, is inherently flawed from a cost accounting perspective in that it prevents a provider from receiving full reimbursement of allowed costs unless every licensed bed is occupied 365 days a year.

Remedies:

1. SCDSS should utilize a reasonable and statistically sound methodology in reimbursing providers for actual costs to provide services. This rate should be adjusted for inflation to better reflect today's cost.
2. SCDSS should be required to establish a reasonable statistically sound Cost Methodology using updated cost data from providers.
3. New rates established by SCDSS must be reasonable in that they adequately reimburse providers for the full actual cost incurred in providing contracted services. Such a rate must be based on actual occupied beds and not simply on the number of licensed beds a provider might have.

The cost for New Foundations to meet the new contract requirements are substantial and our organization will have to rely on its ability to raise financial contributions from donors to pay bills, salaries and other expenses related to fulfilling contract requirements.

Thank you for your thoughtful consideration of our concerns expressed in this Protest.



Steve Dean
Chief Executive Officer
(864) 260-4708
sdean@newfoundationschildren.com

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 111.1 of the 2016 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
1205 Pendleton Street, Suite 367, 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.