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## Protest Decision

**Matter of:** Medco Sports Medicine Case 2019-117  
ACO Med Supply Case 2019-120

**Posting Date:** November 20, 2018

**Contracting Entity:** University of South Carolina

**Solicitation No.:** USC-IFB-3386-JB

**Description:** Provide Rehabilitation Medical Training Equipment for USC Football Operations Facility

### DIGEST

Protest that apparent successful bidder is not responsible is denied. Protest that highest priced bidder is best qualified is denied. Protest letters of Medco Sports Medicine (MS) and ACO Med Supply (ACO) are included by reference. [Attachments 1 and 2 respectively]

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (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.

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

## BACKGROUND

Solicitation Issued	October 10, 2018
Amendment One Issued	October 18, 2018
Statement of Award Issued	October 26, 2018
Protest of Medco Sports Medicine Received	October 26, 2018
Revised Intent to Award Issued	October 29, 2018
Protest of ACO Med Supply Received	October 30, 2018

The University of South Carolina (USC) issued this Invitation for Bids to acquire rehabilitation medical training equipment for the USC football operations facility. The solicitation requested pricing for nine types of medical equipment, installation, and shipping. Six bids were opened on October 23, 2018. Henry Schein, Inc. (HS) was determined to be the lowest responsive and responsible bidder with a bid of \$88,625.11. A Statement of Award was posted to HS on October 26, 2018. MS protested on October 26, 2018, alleging that HS was not a responsible bidder because it was not authorized to distribute the Hivamat 200 requested in the bid. In reexamining HS's bid, the procurement officer discovered a mathematical error in HS's bid that increased its bid price to \$103,124.79. Even after this correction,<sup>2</sup> HS was the low bidder and an Intent to Award was posted to HS on October 29, 2018. ACO protested that it was the best qualified bidder on October 30, 2018.

## ANALYSIS

MS protests that the apparent successful bidder is not authorized to provide all the items listed in the bid. In submitting its bid, the low bidder has agreed to provide all the requested equipment at the price bid. HS submitted a bid indicating that it intends to meet the terms of the solicitation. Responsiveness is determined solely by examining the four corners of the bid at the time of opening. *Protest of Two State Construction Co.*, Panel Case No. 1996-2. There is nothing in HS's bid to indicate that it is non-responsive. In response to an inquiry by the CPO, HS affirmed

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<sup>2</sup> The correction of errors in addition are authorized under Regulation 19-445.2085(B):

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

its intent to fulfill the contract as bid. [Attachment 3] On its face, HS's bid is responsive, and this issue of protest is denied.

ACO protests that it is the best company to provide the desired equipment. ACO resubmitted its bid with its protest. ACO makes no allegation that the successful bidder was non-responsive or non-responsible and alleges no process violation of the Code. This solicitation was issued under Section 11-35-1520 which required award be made to the lowest priced responsive and responsible bidder. ACO was the highest priced of the six bids received. A claim that it is the best company to provide the requested goods or services is, whether true or not, not a valid issue of protest. This fails to allege a violation of the Code, and fails to state a claim upon which the CPO may grant relief. ACO's protest is denied.

## **DECISION**

For the reasons cited above, the protests of Medco Sports Medicine and ACO Med Supply are denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**From:** [Protest-MMO](#)  
**To:** [MMO - Procurement](#); [Shealy, Vaight](#); [Skinner, Gail](#)  
**Subject:** FW: Protest of USC-IFB-3386-JB  
**Date:** Friday, October 26, 2018 3:13:01 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

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**From:** MacDonnell, Tyler  
**Sent:** Friday, October 26, 2018 3:12:51 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** Protest-MMO  
**Subject:** Protest of USC-IFB-3386-JB

Good Afternoon,

Please accept this email as the official Protest of the Bid # USC-IFB-3386-JB from Medco Supply.

We are protesting because the Distributor who was awarded this Bid does not have the legal rights to distribute the Hivamat 200 Evident as requested on the Bid. This Bid was listed as an ALL OR NONE bid.

Please provide a Bid recap with the Bidders, their line item prices, as well as specific items bid on for this Award at your earliest convenience.

Thank you for your attention to this matter.

-TM

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Tyler MacDonnell, MS, LAT, ATC  
Sales Representative  
Medco Sports Medicine  
800.55.MEDCO | [customersupport@medcosupply.com](mailto:customersupport@medcosupply.com)  
[medco-athletics.com](http://medco-athletics.com)  
Mobile: 919-407-0745



**We enable people to feel good,  
perform better and live great.**



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Attachment 2



October 30<sup>th</sup>, 2018

ACO Med Supply  
Greg Harmon - President  
6510 Northpark Blvd  
Charlotte NC 28216  
704-921-0116

[Greg.harmon@acomedsupply.com](mailto:Greg.harmon@acomedsupply.com)

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

RE: PROTEST Solicitation USC-IFB-3386-JB

Dear Chief Procurement Officer,

On behalf of ACO Med Supply I'm writing to formally protest the award of Solicitation USC-IFB-3386-JB to Henry Schein. It is my belief that our company is best suited to provide the desired equipment to the University of South Carolina and have proven to be intimately aware of the project and needs of the facility. In fact, we called to attention some items that were overlooked and/or misinterpreted on the original solicitation calling for the amendment.

Please find our revised Bid Submission per the amendment. You will see that we have quoted the project 100% and have favorable pricing for the University. Please know that we, ACO, have the capacity to not only provide and install these items for a greater value; we can also stage all the equipment at our warehouse and have everything delivered by our team all at once.

Thank you for the time and consideration as you review our protest. We look forward to hearing from you and appreciate the opportunity to potentially work with the University of South Carolina on this exciting project.

Sincerely,

A handwritten signature in blue ink that reads "Greg A. Harmon".

Greg Harmon



## Attachment 3

**From:** [Viggiano, Joanne](#)  
**To:** [Spicer, Michael](#)  
**Cc:** [Klingler, Jeff](#)  
**Subject:** FW: Protest of University of South Carolina Solicitation USC-IFB-3386-JB, for rehabilitation medical training equipment.  
**Date:** Thursday, November 08, 2018 3:14:27 PM

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Good Afternoon Michael,

Enclosed is our response to your question regarding Bid # IFB-3386-JB .Hivamat 200.

My question for you is can Henry Schein provide the equipment requested in this solicitation at the price bid?

**Henry Schein can provide the equipment requested in this solicitation at the price bid. We purchase the equipment from Fabrication Enterprises, Inc. without restriction imposed by them on use or resale.**

If you have any other questions or concerns please do not hesitate to contact us.

Thank you  
Joanne

**Joanne Viggiano** | Bid Department Supervisor | Henry Schein Healthcare Services  
135 Duryea Road - E270 Melville, NY 11747 | 📞: 631-414-8325 | ✉️:  
[joanne.viggiano@henryschein.com](mailto:joanne.viggiano@henryschein.com) | FAX: 866-738-8999



**Help us help you! All requests for Bids, Quotes and price analyses must be submitted via the Bid Team as follows:**

- > send all requests to [biddept@henryschein.com](mailto:biddept@henryschein.com) as soon as they become available
- > unless otherwise stated in a formal bid or RFP, all requests will be responded to within **10 business days**
- > to provide our customers with a complete proposal designed to enhance their practice management efficiency and profitability, all requests should include:

- ✓ Account Number(s)
- ✓ Annual Product Usage
- ✓ Complete Product Description
- ✓ Manufacturer name and ID Number
- ✓ Unit of Measure
- ✓ Quantity / Units Purchased
- ✓ Last Price Paid



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**From:** Bid Dept  
**Sent:** Wednesday, November 07, 2018 9:53 AM

**To:** Viggiano, Joanne <Joanne.Viggiano@henryschein.com>  
**Cc:** Bid Dept <Bid.Dept@henryschein.com>  
**Subject:** FW: Protest of University of South Carolina Solicitation USC-IFB-3386-JB, for rehabilitation medical training equipment.

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**From:** Spicer, Michael [<mailto:m Spicer@m mo.sc.gov>]  
**Sent:** Wednesday, November 07, 2018 9:43 AM  
**To:** Bid Dept <[Bid.Dept@henryschein.com](mailto:Bid.Dept@henryschein.com)>  
**Cc:** [jbrookin@mailbox.sc.edu](mailto:jbrookin@mailbox.sc.edu); [Tyler.MacDonnell@medcosupply.com](mailto:Tyler.MacDonnell@medcosupply.com);  
[jeff.luther@acomedsupply.com](mailto:jeff.luther@acomedsupply.com); Spicer, Michael <[m Spicer@m mo.sc.gov](mailto:m Spicer@m mo.sc.gov)>  
**Subject:** Protest of University of South Carolina Solicitation USC-IFB-3386-JB, for rehabilitation medical training equipment.

Ms. Viggiano,

I am the Chief Procurement Officer for the State of South Carolina. I review protests of South Carolina government procurements. The University of South Carolina recently posted an award to Henry Schein, Inc. to Provide Rehabilitation Medical Training Equipment for USC Football Operations Facility, Solicitation Number USC-IFB-3386-JB. One of the items you bid was a Hivamat 200. I have received a protest from Medco Sports Medicine alleging that Henry Schein does not have the legal rights to distribute the Hivamat 200 Evident as requested in the Bid. My question for you is can Henry Schein provide the equipment requested in this solicitation at the price bid?

Your prompt response would be appreciated.



**Michael B. Spicer | Information Technology Management Officer**  
**Division of Procurement Services | SC State Fiscal Accountability Authority**  
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 896-5225 | [m Spicer@m mo.sc.gov](mailto:m Spicer@m mo.sc.gov)

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**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised June 2018)*

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.

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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 2018 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**

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\_\_\_\_\_  
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: \_\_\_\_\_

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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.**