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## Protest Decision

**Matter of:** Beyond Lucid Technologies & Consulting

**Case No.:** 2020-203

**Posting Date:** October 30, 2019

**Contracting Entity:** South Carolina Department of Health and Environmental Control

**Solicitation No.:** 5400018083

**Description:** Emergency Medical Svcs Data Reporting System

### DIGEST

Protest of restrictive specifications is dismissed in part and granted in part. The protest letter of Beyond Lucid Technologies & Consulting (Beyond Lucid) is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer (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

Solicitation Issued

08/19/2019

Amendment 1 Issued  
Protest Received

09/13/2019  
09/27/2019

The State Fiscal Accountability Authority (SFAA) issued this Request for Proposals (RFP) on behalf of the South Carolina Department of Health and Environmental Control (DHEC) on August 19, 2019 to acquire a replacement for its current system that includes a statewide emergency medical services (EMS) electronic data reporting system, electronic patient care reporting system (ePCR) and contractual services for a tracking system that includes EMS/Licensing/Credentialing.

Beyond Lucid protests that the solicitation excludes otherwise qualified offerors by including requirements for an EMS/Licensing/Credentialing system, is unduly restrictive by requiring the offeror to provide a project manager with a Project Management Institute (PMI) Project Management Professional (PMP) certification, and a special standard of responsibility is not adequately defined.

## **ANALYSIS**

Beyond Lucid first protests that while multiple vendors can provide EMS and ePCR systems, combining those requirements with requirements for an EMS/Licensing/Credentialing system that does not inherently belong with them creates a de facto sole source and is unduly restrictive. Beyond Lucid argues that including the education, certification and licensing system in this solicitation limits practical competition to the current provider. DHEC argues the solicitation reflects the functionality it requires to continue performing the operations it currently performs which require full integration of the requested systems. (Attachment 2) DHEC also argues that Beyond Lucid's protest was not filed within 15 days of issuance of the solicitation as required by the Code and is therefore untimely.

Section 11-35-4210(1)(a) provides:

A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation shall protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date of issuance of the Invitation For Bids Request for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Requests for Proposals or other solicitation

document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

Beyond Lucid argues that the Code allows for a timely protest within 15 days of the issuance of an amendment and that its protest was filed in a timely manner.

The original solicitation was issued on August 19, 2019, and included the requirements for an education, certification and licensing system. Amendment 1 was issued on September 13, 2019. The Amendment made no modifications to the specifications for the education, certification and licensing system in Amendment 1. The Amendment included a Summary of Questions and Answers from prospective offerors, but there were no questions related to the education, certification and licensing system listed. There was no request that these requirements be removed from the solicitation.

The Code requires that a protest be filed within 15 days of the issuance of the solicitation, or an amendment if the amendment is at issue. In the *Appeal by Mechanical Contractors Association of S. C.*, Case 1995-12, the Procurement Review Panel provided the following guidance regarding this situation:

The Panel finds that an amendment would only be “at issue” if it provided new or different information than the solicitation documents. Otherwise, the fifteen days for protesting the solicitation would be extended by any amendment issued. In this case, the issue of protest is based on the language in the solicitation document that “those with G.C. license whose primary function is that of mechanical & electrical contracting shall not be considered.” The amendment does not alter the exemption in the solicitation, but merely confirms it. The protested issue concerns information clearly contained in the Invitation For Bids (IFB), which is not altered by the addendum. Thus, in this case, the time to file a protest begins with the issuance of the solicitation and not the amendment. The protest letter of September 15, 1995, was filed more than fifteen days from the August 28, 1995, date of publication of the IFB, and therefore the protestant is not timely filed. The Panel does not have jurisdiction to hear the merits of the protest.

In this case, the Amendment did not provide new or different information than the solicitation. Consequently, the Amendment cannot be at issue. The original solicitation was issued on August 19, 2019, and Beyond Lucid’s protest was not received until September 27, 2019—39

days after publication of the solicitation. This issue of protest was not filed within the statutory limit prescribed by the Code and is dismissed.

Beyond Lucid next protests the requirement that an offeror provide a project manager with a Project Management Institute (PMI) Project Management Professional (PMP) certification. This requirement was first published in the original solicitation and there was no reference to the requirement in the Amendment. This issue of protest is dismissed as untimely for the same reasons that the protest of the education, certification and licensing system was dismissed.

Beyond Lucid's last issue of protest is related to a special standard of responsibility that was published in the original solicitation as:

- Must have completed a minimum of 3 separate EMS System implementations for a State Government Agency within the past 5 years. The referenced implementations each must include components for EMS Licensure and Certification, tracking of the provision of EMS services through run sheets, and monitoring the availability of medical services for emergency allocation.

[Solicitation, Page 37] In response to a vendor's question about whether the bidder must have performed at least three separate state EMS Systems this requirement was modified in the Amendment as follows:

- Must have completed a minimum of 3 separate EMS System implementations for a **large-scale public municipality or a** State Government Agency within the past 5 years. The referenced implementations each must include components for EMS Licensure and Certification, tracking of the provision of EMS services through run sheets, and monitoring the availability of medical services for emergency allocation.

[Amendment 1, Page 37]

Beyond Lucid protests that the term "large scale municipality" is not sufficiently defined and consequently cannot be a basis for disqualification. DHEC responds:

This section was amended at the specific request of a potential bidder who claimed it to be too restrictive as written. A valid point was made that some states, such as North Dakota, have less population than some metropolitan areas, such as Los Angeles or New York City. Rather than establishing an arbitrary population number or patient care reporting load, or other narrow definition, the Department chose "large scale municipality" to be broad in focus to be as inclusive as possible, and to keep in line with specific examples provided by the questioning vendor. A "large scale municipality" is not defined by the US Census Bureau;

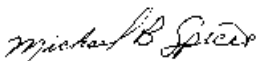
however, a list of the 100 largest cities, based on 2010 census data, is available at [http://www.citymayors.com/gratis/uscities\\_100.html](http://www.citymayors.com/gratis/uscities_100.html). DHEC believes that this list of the largest 100 cities could provide a fair and unbiased basis, and we are willing to amend this qualification to further define “Large Scale Municipality” as being among the cities on this list or any county or regional entity that has at least the population of the number 100 city.

Regulation 19-445.2125F requires special standards of responsibility to be “specific, objective and mandatory.” Beyond Lucid is correct that “large scale municipality” is insufficiently defined and is not objective. This issue of protest is granted. However, DHEC’s offer to amend the solicitation to better define the protested term should resolve this issue, and DHEC is directed to make such an amendment to ensure this special standard of responsibility is specific, objective, and mandatory.

## **DECISION**

The protest of Beyond Lucid Technologies & Consulting is dismissed in part and granted in part. DHEC is directed to amend the solicitation to further define the term “Large Scale Municipality” as set forth above.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer



From the Desk of  
*Jonathon S. Feit, MBA, MA*  
*Co-Founder & Chief Executive*

September 27, 2019

Johanne Sullivan, CPPB  
South Carolina State Government  
SFAA, Div. of Procurement Services, ITMO  
1201 Main Street, Suite 601  
Columbia SC 29201  
jmsullivan@mmo.sc.gov

**Re: SOLICITATION # 5400018083 – Following addendum #1 issued 09/13/2019 (with 15 days to protest)**

Dear Ms. Sullivan:

I hope this letter finds you well. In accordance with the section of the solicitation called “DUTY TO INQUIRE,” which reads in part as follows—“*Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. All ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation shall be interpreted to require the better quality or greater quantity of work and/or materials, unless otherwise directed by amendment.*”—and the section called “PROTEST,” which reads in part as follows—“*If you are aggrieved in connection with the solicitation or award of the contract, you may be entitled to protest, but only as provided in Section 11-35-4210. To protest a solicitation, you must submit a protest within fifteen days of the date the applicable solicitation document is issued.*”—we submit the following for your consideration and ask that you consider whether the bid can fairly proceed as presently structured. **Doing so is not in the best interest of the State.**

**1. EXCLUSION OF OTHERWISE QUALIFIED BIDDERS (i.e., BLT's RICH & RELEVANT EXPERIENCE):**

The RFP as constructed interweaves several functions, including some that are proprietary to South Carolina, which led DHEC during the bidder's conference to state—paraphrasing but the wording is close—that “we want what we currently have” (e.g., credentialing and other services with respect to lifeguards and other responders). These are coupled with standard ePCR data repository functions and the ability to provide a statewide deployable ePCR (web-based, but web-dependent services are vulnerable in South Carolina due to extensive rural areas). The latter, Beyond Lucid Technologies can do “out of the box,” and we have on several occasions—including in South Carolina, as recently as August 2019—demonstrated our technical superiority to far larger and more widely deployed providers with respect to prehospital data handling, storage, conversion, analytics, and interoperability. **Our field software was the first to meet South Carolina's compliance requirements—below is a letter from EMS PIC attesting to that fact**—and we have been lauded by the likes of Amazon Web Services and others for our ability to facilitate a rapid response in the field during Hurricanes Maria and Irma, when our partner-clients needed to rapidly spin up additional units for a patient surge. MEDIVIEW met the challenge *and* operated fully offline.

Moreover, it is worth pointing out that Beyond Lucid Technologies is the specific company that was selected by FIREHOUSE as its licensed ePCR provider (including in South Carolina). FIREHOUSE is the largest provider of Fire (NFIRS) Records Management Software, formerly a division of Xerox / Conduent Government Services. Beyond Lucid Technologies was selected due to our systems' demonstrated ability to scale to any size of deployment, to operate fully offline (i.e., the most robust and real-time interoperable software system in the EMS industry today, and as the first to incorporate telemedicine, which is currently of high interest to prehospital services in South Carolina, including all with an interest in the ET3 program). **Please see attached documentation from FIREHOUSE.** The MEDIVIEW BEACON Prehospital Health Information Exchange (HIE) is built on the same architecture as the ePCR repository that we wish to offer the state of South Carolina to facilitate data aggregation, storage, and analytics. BEACON is deployed at over 100 hospitals, including several in South Carolina, and it has already received, processed, analyzed, and transmitted data—in as little as 30 seconds—from nine different (9) ePCR systems, including several with substantial presence in South Carolina, namely ZOLL, ESO Solutions, Firehouse, Fireworks, Medusa Medical, W.A.T.E.R., High Plains, and Stryker HealthEMS. *This functionality is, of course, core to that of a prehospital data repository.*

However, by inserting proprietary data requirements into the RFP, DHEC has erected a barrier around our ability to submit a proposal that could meet or exceed that of any larger incumbent technology firm. It has unnecessarily limited competition *where there is no compelling and objective technical reason that two interoperable systems could not be used to achieve the same or better operations than what the State receives from its current vendor*, in terms of cost, performance, flexibility, innovation (i.e., new and useful future features), uptime, and support. During the bidder's conference, we mentioned the opportunity to "open the tent" to additional innovators, and the response appeared reasonable: essentially, the State said that "if you can meet the technical requirements, we want to hear from you," and in the follow-up Q&A responses, the State indicated that they would be willing to consider a custom-built solution that is fully integrated and able to meet the State's requirements now and into the future.

Beyond Lucid Technologies would be *excited* to provide such service to the State of South Carolina and additional Fire & EMS agencies than those with already utilize our technologies. But the State has erected structural barriers that prevent us—*without justification*—from submitting a bid that will showcase our abilities to serve the State. During the bidder's conference, the State asked *prospective bidders* to assess the fairness of these barriers—an unconventional approach that "puts foxes in charge of the hen house" (*it is rather unusual for vendors to weigh in on bid requirements*). The answers provided by larger vendors were, as expected, positioned so as to reinforce their incumbency while preventing an agile competitor from entering the mix—*which would drive prices down*.

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**EMS Records**

Agency	Incident#	Incident Date	Depart Scene	Transport Mode	Impression	Gender	Age	Arrival Time	PCR#	View
Orangeburg County EMS	2019-11673A	09/21 12:58	09/21 13:35	Emergent (Immediate Response)	Respiratory Distress	Male		09/21 13:36	59305	
Orangeburg County EMS	2019-11673	09/21 12:58	09/21 13:35	Emergent (Immediate Response)	Multitrauma	Female	47 Years	09/21 13:36	59160	

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**EMS Records**

Agency	Incident#	Incident Date	Depart Scene	Transport Mode	Impression	Gender	Age	Arrival Time	PCR#	View
Williamsburg County EMS	19-4973	09/24 13:43	09/24 14:11	Non-Emergent	Fever	Female	74 Years	09/24 15:02	24402	
Williamsburg County EMS	19-4905	09/20 15:40	09/20 18:47	Non-Emergent	TIBIA FRACTURE	Male	15 Years	09/20 19:30	24332	
Williamsburg County EMS	19-4899	09/20 10:21	09/20 10:43	Non-Emergent	Melaise	Male	63 Years	09/20 11:35	24320	
Williamsburg County EMS	19-4883	09/19 08:49	09/19 09:30	Emergent (Immediate Response)	POSSIBLE HEAD INJURY	Male	42 Years	09/19 10:15	24300	

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**EMS Records**

Agency	Incident#	Incident Date	Depart Scene	Transport Mode	Impression	Gender	Age	Arrival Time	PCR#	View
New Britain EMS	19-10770	09/25 13:12	09/25 13:30	Non-Emergent		Male	19 Years	09/25 14:25	98143324	
New Britain EMS	19-10719	09/24 13:45	09/24 14:38	Non-Emergent	Septic organism	Female	54 Years	09/24 14:47	98135692	
New Britain EMS	10720	09/24 14:04	09/24 14:28	Emergent (Immediate Response)	Injury	Female	42 Years	09/24 14:46	98135685	
New Britain EMS	19-10612	09/22 15:30	09/22 15:47	Non-Emergent		Female	53 Years	09/22 16:05	98119733	
Suffield Volunteer Ambulance Association	19-16664	09/21 16:12	09/21 16:43	Non-Emergent	sick person	Female	89 Years	09/21 17:12	2052	
Suffield Volunteer Ambulance Association	19-16610	09/20 22:55	09/20 23:36	Non-Emergent	Sever right shoulder and arm pain	Male	87 Years	09/21 00:05	2056	
Volunteer Fire Association	19-16737	09/20 07:59	09/20 08:20	Emergent (Immediate Response)	Unspecified abdominal pain	Male	55 Years	09/20 08:50	2054	
Volunteer Fire Association	19-10451	09/18 23:28	09/19 00:15	Non-Emergent	Acute respiratory distress syndrome	Male	6 Years	09/19 00:24	98090738	
Volunteer Fire Association	19-16672	09/19 04:37	09/19 05:17	Non-Emergent		Female	81 Years	09/19 05:52	2047	
Volunteer Fire Association	19-10451	09/18 23:28	09/19 00:15	Non-Emergent	Acute respiratory distress syndrome	Male	6 Years	09/19 00:24	98090738	
Volunteer Fire Association	19-10453	09/19 00:34	09/19 00:58	Non-Emergent	Other general symptoms and signs	Male	40 Years	09/19 01:14	98090865	

19:55:16

Two different companies' ePCRs, one hospital-facing portal.

***In essence, DHEC first said, “if you can do everything we need, we would be happy to look at your solution.” But then they said: “Actually, no we won’t consider what you can do—because of arbitrary external factors with no bearing on your ability to meet the needs of the Fire & EMS agencies across the State of South Carolina, even as has already been widely demonstrated.”***

**“QUALIFICATIONS - SPECIAL STANDARDS OF RESPONSIBILITY (MAR 2015)”**

*Must have completed a minimum of 3 separate EMS System implementations for a **large-scale public municipality** or a State Government Agency within the past 5 years. The referenced implementations each must include components for EMS Licensure and Certification, tracking of the provision of EMS services through run sheets, and monitoring the availability of medical services for emergency allocation.*

**(Bold and underlined text was added in addendum #1.)**

The following are two examples of barriers erected in the RFP that serve no purpose other than preventing a small but demonstrably capable firm like Beyond Lucid Technologies from bidding on this project, *and/or* are so vague that they should be struck from the RFP purely because they are open to subjective interpretation and argument:

2. **“Large scale public municipality” is insufficiently defined and therefore cannot be a basis for qualification.** For example, if one is serving the 17th largest population in South Carolina by population (out of 46 counties)—is that considered “large”? If one is serving the city of San Francisco (population 884,000)—which has no “third service” public EMS agency but rather contracts with three different entities, including a fire department and two private companies to run 9-1-1 transports, and one of those three is your partner-client—does that agency *not* count because it is private (even though the city is larger than the *largest* county in South Carolina by population)?
  - Theoretically speaking, how should any company’s deployment experience obtained through acquisition—i.e., purchasing a firm with a rich history and market experience—weigh in comparison with the experience obtained by a company through performance of such implementations and deployments of its own accord?
  - If the “large-scale public municipality” is a state whose population is *less* than that of San Francisco—does the fact that the entity is a state vs. a city “count” more even if the population of the state is less than that of the city?
  - If the company’s experience with “large-scale public municipalities” is largely outside of South Carolina, should the company’s experience *in* South Carolina count more or less substantially, given the relevance of local knowledge of the State’s unique attributes (e.g., rural vs. urban population, interests in community paramedicine and telemedicine, weather, network connectivity, consolidation of healthcare in a small number of regions, etc.).
  - Perhaps most importantly: Although the State of South Carolina as a whole is a “large-scale public entity,” unlike places such as California, ***South Carolina’s Fire & EMS community is primarily comprised of a constellation of small and mid-sized agencies.*** (Even DHEC’s EMS and Trauma Bureau is a relatively compact organization.) Therefore, shouldn’t the bidder’s experience working with small, suburban and rural—even austere and disconnected—Fire and EMS agencies “count” at least as much, if not more, than a company’s experience with “large-scale” public entities? After all, the entities which the successful bidder is going to regularly engage (i.e., ePCR, repository, and licensing) are *not* large.
3. **PMP REQUIREMENT:** If a bidder has already successfully implemented “large-scale public” deployments—to a sufficient degree that the deployments qualify as relevant experience within the scope of the RFP (which, as noted above has not been sufficiently defined)—yet it has successfully completed such deployments *without* the use of a PMP to date, then what purpose does such a criterion serve other than as a prejudicial “weed-out” factor? During the bidder’s conference, the companies in the room were asked whether a PMP requirement would pose a problem, and they said it does not. But the fact that these bidders do not have a problem with the requirement does not mean it is not prejudicial to others (especially non-incumbents that presumably deserve a chance to bid). It does not address *why* a PMP per se is in fact valuable, given that including it may unnecessarily increase costs.



Thank you for your consideration. We look forward to your decision, and will be excited to bid on a revised RFP.

Most sincerely yours,



Jonathon S. Feit, MBA, MA  
Co-Founder & Chief Executive  
Beyond Lucid Technologies, Inc.  
[Jonathon.Feit@beyondlucid.com](mailto:Jonathon.Feit@beyondlucid.com)  
(650) 648-3727

## Attachment 2



October 14, 2019

Mr. Michael B. Spicer  
Division of Procurement Services  
South Carolina State Fiscal Accountability Authority  
1201 Main Street, Suite 600  
Columbia, SC 29201

RE: Solicitation No. 5400018083  
Protest from Beyond Lucid Technologies, Inc. dated September 27, 2019

Dear Mr. Spicer:

This letter is in response to the protest letter received on September 27, 2019 from Mr. Jonathon S. Feit on behalf of Beyond Lucid Technologies, Inc. ("Beyond Lucid"). Beyond Lucid is protesting solicitation 5400018083, "Emergency Medical Svcs Data Reporting System." While we disagree with much of what is in the protest letter, we do appreciate Beyond Lucid's interest in doing business with DHEC.

In its protest letter, Beyond Lucid enumerates three points of protest:

1. Exclusion of otherwise qualified bidders
2. "Large scale public municipality" is insufficiently defined and therefore cannot be a basis for qualification
3. PMP requirement

Section §11-35-4210(1) provides that, for a protest to be timely, it must be received "within fifteen days of the date of issuance of the Invitation For Bids Request for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue."

DHEC contends that items 1 and 3 are both untimely and should be summarily dismissed. The original solicitation was issued on August 19, 2019 and the deadline for a timely protest of any requirement contained in it was therefore September 3. Neither item 1 nor item 3 relates to the September 13 amendment, but both address elements of the original August 19 solicitation and must have been filed by September 3 to be timely. Since the protest was not received until September 27, it is untimely as to those two grounds of protest.

In the event that you disagree with our assertion that items 1 and 3 are untimely, I will present below our response to both of these items, as well as to item 2.

The first point, as we understand it, is a generalized complaint that the solicitation, in whole, is unduly restrictive. I requested greater clarity on this first item from Beyond Lucid, and Mr. Feit responded by e-mail on October 8. He refers to and objects to the "title of the RFP," which he states as "Statewide Emergency Medical Services Electronic Data Reporting System, Electronic Patient Care Reporting System." I have found no record of this being used as the title for the RFP. In fact the official "description" of the solicitation – the nearest thing to a "title" - used on the cover page and the SCBO advertisement, is "Emergency Medical Svcs Data Reporting System." This is an all-encompassing description of DHEC's current system which we are seeking to replace or continue. It is a conglomerate system with regards to all forms of data that is handled by the DHEC's Bureau of EMS, not simply electronic patient care reporting (ePCR), aggregation, and exports to the National EMS Information System. The ePCR portion of this RFP is a small portion of what the overall data system must have to be a viable tool for the Bureau. Other items include all items within the Scope section of the RFP, including items 17-33 (Education, Certification, Licensing, Inspection) to which Beyond Lucid objects. Each area of DHEC's current reporting system operates in concert with all the others. The Bureau is also responsible for the credentialing, re-certification, and provision of hard card IDs for the Athletic Trainer community in SC. This is also an integral part of our credentialing software and reporting. As a small example of the complexity of the system overall: an EMT must be credentialed within our system, be an active EMT on a specific agency's roster within our system, be assigned to a specific apparatus or ambulance, select that apparatus from their own (or the Bureau's contracted system) drop-down of available resources, to begin to write an ePCR on a patient. The ePCR portion of the RFP is but a small portion of what the overall function of the SC EMS Data Reporting System is required to perform. The Department is not being exclusionary in its request to have the system perform operations that it currently performs. The functionality we currently have is the functionality we will require to continue operations and we cannot afford to lose any listed capability within the system and continue operation. The functionality we currently have is the functionality we will require to continue operations and we cannot afford to lose any listed capability within the system and continue operation.

The second point raised in the protest by Beyond Lucid is that "'Large Scale Municipality' is insufficiently defined and therefore cannot be a basis for qualification." This refers to Section V of the solicitation, Qualifications. The required minimum qualification formerly read, in the original solicitation, as "Must have completed a minimum of 3 separate EMS System implementations for a State Government Agency within the past 5 years . . ." This section was amended at the specific request of a potential bidder who claimed it to be too restrictive as written. A valid point was made that some states, such as North Dakota, have less population than some metropolitan areas, such as Los Angeles or New York City. Rather than establishing an arbitrary population number or patient care reporting load, or other narrow definition, the Department chose "large scale municipality" to be broad in focus to be as inclusive as possible, and to keep in line with specific examples provided by the questioning vendor. A "large scale municipality" is not defined by the US Census Bureau; however, a list of the 100 largest cities,

based on 2010 census data, is available at [http://www.citymayors.com/gratis/uscities\\_100.html](http://www.citymayors.com/gratis/uscities_100.html). DHEC believes that this list of the largest 100 cities could provide a fair and unbiased basis, and we are willing to amend this qualification to further define "Large Scale Municipality" as being among the cities on this list or any county or regional entity that has at least the population of the number 100 city.

The third and final point of the protest is the "PMP requirement." Again, this is from Section V of the solicitation, Qualifications. The requirement reads, "Must designate a dedicated Project Manager to manage the implementation of the new system. The Project Manager must possess a valid and current Project Management Institute (PMI) Project Management Professional (PMP) certification." Beyond Lucid protests this requirement stating that it is prejudicial and that it was added to serve as a "weed-out factor."

Project managers perform a critical role in any complex project and contribute to its success. Project managers benefit organizations by obtaining the highest possible returns while minimizing resources (i.e. cutting overhead costs, increasing the productivity of other employees, etc.). To ensure that project managers have the skills to continuously control risks and minimize uncertainties, many organizations mandate that their project managers complete Project Management Professional (PMP) certification. The PMP is the most important industry-recognized certification for project managers and is offered by the Project Management Institute (PMI). As of August 2019, there are 932,720 active PMPs in the United States.

Substantial evidence indicates that when project managers are PMP-certified, organizations complete more of their projects on time, on budget, and meet their original goals (Pulse of the Profession study, PMI, 2015). A recent Pricewaterhouse Coopers survey states that certified PMP project managers handle more than three-fourth of the high performing projects. Also, companies with more than one-third PMP certified managers have much better project success than companies which do not. In turn, DHEC now frequently requires that contracted or vendor project managers be PMP-certified. This has become a benchmark for the agency when implementing new software solutions, as can be noted in the specifications of numerous agency solicitations and Beeline postings over the last five years. Examples of solicitations that have required vendors to have PMP certified projects managers include the e-Permitting project (solicitation 5400008580, page 46), Prescription Monitoring Program (solicitation 5400017286, page 50) and Project Staff Support Services (solicitation 5400012222, page 49).

Furthermore, the requirement as written in this solicitation does not mandate that the vendor's project manager be a full-time permanent employee of the company. It simply requires that the PMP-certified project manager be in place and managing the project through the implementation phase. The selected offeror could accomplish this by retaining a PMP-certified project manager as an independent contractor, or hiring a project manager on a temporary basis, to manage the project during implementation.

In summary, we believe that the points 1 and 3 of Beyond Lucid's protest letter are untimely and should be summarily dismissed as such. If the Chief Procurement Officer believes that they

are timely, we have provided information that we believe supports the inclusion of these protested items in the solicitation and maintain that they are not unduly restrictive and that their inclusion is in the best interest of the State. For protest point 2, while this change in the amendment actually made this solicitation requirement less restricted, rather than more restrictive, we do see that "large scale municipality" is subjective wording, and we are willing to more precisely define this as the 100 largest cities, based on the 2010 census and as listed at the citymayors.com website, or a county or regional entity that has at least the population of the number 100 city.

Sincerely,

A handwritten signature in black ink, appearing to read "Tripp Clark", is written over a horizontal line. The signature is stylized and somewhat cursive.

Tripp Clark  
Procurement Director

CC: Jonathon Feit, Chief Executive, Beyond Lucid  
Jo Sullivan, Procurement Manager, SFFA  
Lisa Roland, Procurement Manager, DHEC  
Darbi MacPhail, Chief Financial Officer  
Larry H. Maddox, DHEC Bureau of Business Management  
Rob Wronski, DHEC Bureau of EMS & Trauma  
John Harleston, DHEC Office of General Counsel  
Rachel Erwin, DHEC Office of General Counsel

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised June 2019)*

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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.**