

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Mental Health America
of Greenville County

Department of Mental Health
RFP No. 5400003119
Telephone Crisis Management/
Counseling Services for Piedmont
Mental Health Center

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-124

POSTING DATE: July 9, 2012

MAILING DATE: July 9, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Mental Health America of Greenville County (MHAGC). With this request for proposals (RFP), the Department of Mental Health (DMH) attempts to procure telephone crisis management/counseling for Piedmont Mental Health Center. MHAGC protested DMH's intent to award to Calls Plus alleging defects in the scope of the solicitation and challenging the experience and qualifications of Calls Plus.

After attempts to settle the matter proved unsuccessful, the CPO convened a hearing June 28, 2012 to resolve the matter. Appearing before the CPO were MHAGC, represented by Jennifer Piver, Chief Executive Officer; Calls Plus, represented by Barbara Lamont, President; and DMH, represented by Allan Powell, Esq.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On March 5, 2012, DMH issued the RFP. (Ex. 3)
2. On March 22, 2012, DMH amended the RFP with Amendment # 1. (Ex. 4)

3. On April 4, 2012, DMH amended the RFP further with Amendment # 2. (Ex. 5)
4. On April 12, 2012, DMH opened the proposals received.
5. On May 23, 2012, after evaluation of the proposals, DMH posted an intent to award to Calls Plus. (Ex. 9) The cumulative scores of the evaluators were as follows:

<u>Offeror</u>	<u>Total Score</u>
Calls Plus	294.00
MHAGC	249.92

(Ex. 10)

6. On May 31, 2012, MHAGC filed its protest with the CPO.

DISCUSSION

MHAGC's protested DMH's intent to award to Calls Plus on the following grounds:

The Scope of Solicitation states that it is soliciting "to provide *[sic]* twenty-four (24) hour telephone crisis management and counseling services for Piedmont Mental Health Center." MHAGC submitted its solicitation based on our proven ability to provide our Callers crisis management and counseling services. We request this review to ensure that the selected vendor meets those unique and often life saving Caller needs versus the services of a traditional answering service.

MHAGC currently provides after hour answering services to other others in our community. Had the solicitation stated the needs of PCMHS were that of an after hour's *[sic]* answering service the pricing structure submitted would have proven even more economical for PCMHS.

The first ground of protest apparently challenges the ability of Calls Plus to provide the services requested in the solicitation.¹ In other words, MHAGC alleges Calls Plus is not responsible. MHAGC offered no evidence in support of its claim, but rather asked the CPO to conduct "a review of the applicants *[sic]* experience and skills associated with crisis

¹ MHAGC may contend that it should have won the contract because its proposal was qualitatively superior to the one Calls Plus submitted. To the extent the protest includes this ground, the CPO will treat it *post*.

management and counseling services for the individuals with mental illness or in crisis that PCMHS serves.”

In a written response, Calls Plus offered, “We are one the premier providers of mental health and healthcare Call Center services in more than 30 states. More particularly, we have successfully provided telephone crisis service to the South Carolina Department of Mental Health in Greenville and Beckman, over the past six years. More than 2,000 SCDMH calls per month are triaged by our skilled Health Service Representatives, who receive ongoing Mental Health counseling training . . . Our trained Health Service Representatives provide mental health triage services not only to South Carolina, but the other leading states in the area of Mental Health, i.e., Massachusetts and Delaware, where we have long standing contracts. For more than a decade we have offered mental health support and crisis hotline services using a full range of assessment and mental health industry protocols.” (Ex. 2)

In its second ground of protest, MHAGC argues that the solicitation failed to state that services would only be required at times when the mental health center was closed, and instead required the contractor to provide “24 hour telephone crisis management and counseling services.” Originally, the RFP did state the scope of work was, “Contractor shall provide 24 hour, seven days per week telephone crisis management and counseling services for residents of Greenville County served by PMHC (Piedmont Mental health Center).” (Ex. 3, p. 12, Scope of Services) With Amendment # 2, dated April 4, 1012, however, DMH amended the scope of service required of the contractors as follows:

On page 12, delete and replace III. SCOPE OF WORK/SPECIFICATIONS with the following:

INTRODUCTION

It is the intent of the South Carolina Department of Mental Health (SCDMH) to solicit for proposals for telephone crisis management and counseling services for

SCDMH's Piedmont Mental Health Center (PMHC). PMHC will assist Contractor by: maintaining on-call staff to assist Contractor and provide back-up; appoint a professional staff member to serve as liaison with Contractor; assisting Contractor in training volunteer staff concerning the management of psychiatric problems.

SCOPE OF SERVICES

3.1 Contractor shall provide telephone crisis management and counseling services for residents of Greenville County served by PMHC. **Hours of operation shall be 5:00 PM to 8:30 AM weekdays, and twenty-four (24) hours a day on weekends, holidays recognized by the state of South Carolina and days when the Governor of South Carolina closes PMHC due to inclement weather.**

(Ex. 5) (Emphasis added) MHAGC's proposal begins with the description "To provide 24 Hour Telephone Crisis Management and Counseling Services for the South Carolina Department of Mental Health's Piedmont Center for Mental Health Services." (Ex. 7, page 4 of 14) In its detailed response, though, MHAGC includes a description of services taken verbatim from the language of paragraph 3.1, Amendment # 2 quoted above. (Ex. 7, page 5 of 14)

CONCLUSIONS OF LAW

This procurement was solicited as a request for proposals, as authorized under Consolidated Procurement Code, Section 11-35-1530. The evaluation criteria included Proposed Plan & Methodology, Experience/Staff Qualifications, and Price. (Ex. 3, p. 16, Evaluation Factors) A panel of qualified evaluators scored the proposals, ranked Calls Plus' proposal most advantageous to the state, and determined Calls Plus the winner. All three members of the panel ranked Call Plus' proposal higher than MHAGC's. (Ex. 10) Additionally, Calls Plus is the incumbent contractor for two other DMH call centers. (Ex. 2) Implicit in the agency's award to Calls Plus is a determination that it was responsible. That determination is reinforced by the evaluator's scoring and the performance by Calls Plus of other contracts for DMH.

The burden is on MHAGC to show that the agency's determination that Calls Plus is responsible is wrong. The Code provides that the determination is "final and conclusive, unless

clearly erroneous, arbitrary, capricious, or contrary to law.” (11-35-2410(A)) MHAGC provided no evidence at all that Call Plus was not responsible. MHGCA failed to carry its burden. This ground of protest is denied.

Alternatively, MHAGC may claim that the evaluators failed to recognize its offer as “better” than the one Calls Plus submitted. According to the Procurement Review Panel, the protestant has the burden to prove, by a preponderance of the evidence, that its allegation concerning the evaluator or evaluators renders the determination clearly erroneous, arbitrary, capricious, or contrary to law. *Protest of Volume Services*, Case No. 1998-4. Moreover, the Panel has repeatedly stated that it will not re-evaluate proposals and will not substitute its judgment for that of the evaluators. *Id.*; *Protest of Coastal Rapid Public Transit Authority*, Case No. 1992-2; *Protest of NBS Imaging Systems, Inc.*, Case No. 1993-16; *Protest of First Sun EAP Alliance, Inc.*, Case No. 1994-11; *Protest of Travelsigns*, Case No., 1995-8; *Protest of Santee Wateree Regional Transportation Authority*, 2000-5. MHAGC offered no evidence that the evaluators failed to follow the requirements of the Procurement Code and the RFP, or that they did not fairly consider all proposals, or that they were biased in any way. Absent such evidence, the CPO cannot substitute his judgment for the judgment of the evaluators. *Protest of Coastal Rapid Public Transit Authority*, Case No. 1992-16. Therefore, the protest ground is denied.

SCDMH offered a motion seeking dismissal of MHAGC’s protest regarding the hours of operation required of the contractor. With Amendment # 2, on April 4, 2012, DMH clearly reduced the hours of operation required of the offers by the scope of services from “24 hour, seven days per week” per the RFP to 5:00 PM to 8:30 AM weekdays, and twenty-four (24) hours a day on weekends, holidays, and office closures due to inclement weather. MHAGC knew of the change, since it included in its proposal language taken verbatim from the amendment.

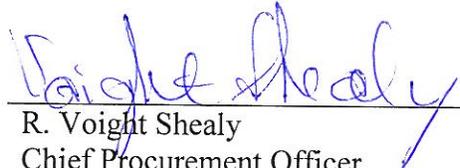
Regarding protests of solicitation specifications, the Code provides, “A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within 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.” (11-35-4210(1)(A)) Given the opportunity, in spite of the clear reduction in hours of operation required of the contractor, MHAGC did not protest Amendment # 2. The Procurement Review Panel has ruled consistently since 1981 that the filing requirement is jurisdictional. The CPO simply lacks the requisite jurisdiction to hear a case filed outside the filing window.

Regarding protests of awards, which is the case here, the Code provides, “Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.” (11-35-4210(1)(B)) The Panel has provided guidance on a very similar situation with its ruling in *Protest of First Sun EAP Alliance, Inc.*, Case No. 1994-11 when it wrote, “The issuance of the intent to award does not modify or extend the statutorily established time to protest a solicitation or amendment document.”

This protest was filed on May 31, 2012, 57 days after DMH issued Amendment # 2, which reduced the required hours of operation. Therefore, DMH's motion to dismiss this ground is granted.

DETERMINATION

For the aforementioned reasons, the protest is denied.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2012)

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: www.procurementlaw.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 83.1 of the 2012 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, an incorporated business must retain 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).

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

Name of Requestor

Address

City

State

Zip

Business Phone

-
1. What is your/your company's monthly income? _____
 2. What are your/your company's monthly expenses? _____
 3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

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

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

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

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

Chief Procurement Officer
Materials management Office
Attention: 5400003119
1201 Main Street
Suit 600
Columbia, SC 29201

Solicitation Number: 5400003119

Protest

This protest is submitted by:

Mental Health America of Greenville County
429 North Main Street
Suite 2
Greenville, SC 29601
(864) 467-3344

Jennifer R. Piver
Chief Executive Officer

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Protest Regarding Solicitation Notice: 5400003119

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I. Introduction

Mental Health America of Greenville County (MHAGC) is protesting the award of solicitation 5400003119 for Piedmont Center for Mental Health Services (PCMHS) 24/7 Crisis management and counseling services to Calls Plus. The primary grounds for this protest are based upon the description identified in Section I. Scope of Solicitations. Section I. states “It is the intent of South Carolina Department of Mental Health (SCDMH) to solicit proposals to provide twenty-four (24) hour telephone crisis management and counseling services for Piedmont Mental Health Center.

II. Grounds of Protest

The Scope of Solicitation states that it is soliciting “to provide twenty-four (24) hour telephone crisis management and counseling services for Piedmont Mental Health Center.” MHAGC submitted its solicitation based on our proven ability to provide our Callers crisis management and counseling services. We request this review to ensure that the selected vendor meets those unique and often life saving Caller needs versus the services of a traditional answering service.

MHAGC currently provides after hour answering services to other others in our community. Had the solicitation stated the needs of PCMHS were that of an after hour’s answering service the pricing structure submitted would have proven even more economical for PCMHS.

III. Rationale

Mental Health America of Greenville County (MHAGC) has extensive experience in providing the services described in the solicitation notice. MHAGC and its comprehensive Crisis Intervention Services are certified by the American Association of Suicidology and MHAGC consistently exceeds the requirements.

The current CRISISline (CL) program evolved from the crisis intervention service started by Greenville Mental Health Center in 1969. CRISISline was created to provide relief and cost savings to the mental health centers with respect to manning the 24/7 community needs. The development of CRISISline was done with mental health center staff that had intimate knowledge of the clients they provide service to. MHAGC retains consultants of the local mental health centers on our board of directors to help with program monitoring and provide consultation when needed regarding specific call types or Callers. We maintain a cooperative relationship that allows us to provide comprehensive services to our Callers who are having a hard time with life struggles and/or managing their mental illness.

MHAGC has provided over 22 years of uninterrupted 24/7 service, offering after hour mental health center on call support, crisis intervention, suicide prevention, supportive listening and guidance to appropriate resources to anyone, anytime and for any reason. This equates to over 192,720 service hours of handling more than 308,000 calls. In 9.8% of the calls we assess for suicide and/or homicide and of those individuals 6.2% were suicides in progress that required immediate rescue. The relationship we have with the mental health center staff and other emergency services have proven to save lives.

The service we have provided PCMHS over the years has truly been the comprehensive crisis management and counseling services solicited for. The services that we provide for our contracts whose needs are for an answering service includes providing statistical information to provider, answering the call, providing the Caller basic information, and making a connection between the Caller and provider. The comprehensive crisis management and counseling services are so much more. We provide a safe place for individuals to talk through their life struggle. All crisis workers receive extended training and mentoring on mental illness, suicide prevention and active listening. This is the essence of our mission and therefore all of the hours of our training is geared towards this effort and is not diluted with training for a variety of vendor needs.

Providing a space for Callers to talk through their struggles isn't the quick process an answering service could provide. Review of our records show that during the last contract period our call lengths varied from one minute (i.e. calls when Callers wanted to know if the center was open) to 2 hours and 7 minutes. In 83% of the calls the crisis line worker was able to skillfully listen and support the Callers efforts to navigate their life's struggles. We also talked to 210 PCMHS clients who were suicidal, homicidal or both. 21 of those individuals suicide was in progress at the time of the call and required emergency services, all of those individuals lived.

IV. Relief Requested

The relief requested by MHAGC is a review of the applicants experience and skills associated with crisis management and counseling services for the individuals with mental illness or in crisis that PCMHS serves. We request that applicant's ability to engage Callers to discuss their life's struggles consistently even when the call may be over two hours long be included. If the needs of PCMHS are that of an answering service we request a new solicitation for service be proposed.

Thank you for allowing MHAGC the opportunity to apply for this solicitation and providing a forum for us to express our concerns. The mission of Mental Health America of Greenville County is to promote positive mental health to all persons in our community through advocacy, education and service. Our mission is very much in line with SCDMH and I hope that we can continue to collaborate.