

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

G. MURRELL SMITH, JR.
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Decision

Matter of: Request for Resolution of a Contract Controversy by Jeffery T. Patterson dba Willowbend Farm

Case No.: 2019-137

Posting Date: September 10, 2021

Contracting Entity: South Carolina Vocational Rehabilitation Department

Solicitation No.: 5400016131

Description: SCVRD Equine Therapy Pilot Program

AUTHORITY

The South Carolina Consolidated Procurement Code (the “Code”) authorizes a contracting state agency or the contractor or subcontractor, when the subcontractor is the real party in interest, to initiate resolution proceedings before the appropriate chief procurement officer of controversies that arise under or by virtue of a contract between them including, but not limited to, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or recession. S.C. Code Ann. § 11-35-4230 (2012). Jeffery T. Patterson dba Willowbend Farm (Willowbend) requested resolution of issues relating to an allegedly improper termination for cause of a contract between it and the South Carolina Vocational Rehabilitation Department (VRD) for the development of an Equine Therapy Pilot Program.

[Attachment 1]

BACKGROUND

Solicitation Issued	08/13/2018
Proposal Received	09/04/2018
Discussions	09/20/2018
Proposal Modifications Received	09/21/2018
Record of Negotiations Signed	11/14/2018
Award Posted	11/19/2018
Notification of Deficiencies	03/15/2019
Response to Deficiencies	03/21/2019
Termination Letter	04/01/2019
Request for Resolution	04/03/2019
Conference Call	08/21/2019
Virtual Hearing	12/13/2019
Virtual Hearing	01/13/2021

This contract was awarded through a Request for Proposals published by VRD on August 8, 2018, to acquire a contractor to develop a Phase I pilot equine-therapy program in the Upstate region of the State of South Carolina, and successfully graduate at least one (1) class of therapy participants.¹ There were no amendments to the solicitation. Only one proposal, from Willowbend, was received on September 4, 2018.

On September 19, 2019, VRD sought clarifications and modifications to Willowbend's proposal under Regulation 19-445.2095(I), identifying two issues of responsiveness and one suspected mistake:

- VRD advised Willowbend that its proposal was not responsive because it lacked a description of the therapeutic methods to be used,
- VRD advised Willowbend that its proposal was not responsive because it failed to identify the specific facility to be used, and
- VRD identified the inclusion of a charge for "All travel for staff and students, to include a small stipend for students" as a suspected mistake, observing:

¹ The State Legislature appropriated \$500,000 through the 2018-2019 Appropriation Act to VRD to develop an equine-therapy program with an emphasis on serving veterans with Post-Traumatic Stress Disorder. VRD is certified by the State Fiscal Accountability Authority to award contracts for supplies and services with a total potential value not to exceed \$250,000. The budget for this contract was not published in the solicitation. Contract was awarded for \$250,000.

“Considering there will not be any student participants and this program will be provided free of charge, could this have been mistakenly placed in the proposal?”

Willowbend responded with amendments to its technical and business proposals on September 21, 2018. In its original technical proposal Willowbend proposed to:

- Design and development (Phase I) of a Herd 2 Human PTSD equine therapy pilot program specifically for the State of South Carolina

The amended proposal expanded this statement to read:

- Design and development (Phase I) of a Herd 2 Human PTSD equine therapy pilot program specifically for the State of South Carolina consistent with the Herd 2 Human therapy program schedule attached hereto as attachment “A-1”)
 - NOTE: The Herd 2 Human program is all ground work and does not include riding or riding lessons. Herd 2 Human is not designed for or limited to equestrians, but rather to encourage participation by anyone, including those who would otherwise be reluctant or refuse to participate because they are afraid, incapable, or not interested in riding. However, the Herd 2 Human program offers students interested in riding an important foundation for horsemanship should they already ride or choose to pursue riding lessons.

(highlighting in original)

Attachment (A-1) to the amended proposal is a program schedule outlining the topics to be covered during two-hour sessions held one day a week for six weeks. The attachment is at the heart of this controversy. VRD alleges that, through this attachment, Willowbend committed to conduct a six-week class in addition to the three-day intensive class alluded to in its original proposal. Willowbend, on the other hand, argues that the attachment was only intended to respond to VRD’s request to clarify the therapeutic methods that would be used in the three-day class and not a commitment to conduct a six-week class in addition to the three-day class.

Willowbend addressed the question of the facility it would use as follows:

- As part of Phase I, Offeror will locate and provide a suitable site for conducting the program. The site will fit the design for equine-human interaction and therapy consistent

with the Herd 2 Human program design and be maintained and in good repair. The facility criteria for the Herd 2 Human program in SC will be similar to Willowbend Farm's facility in Montana as follows, but not limited thereto:

- An indoor fully enclosable or otherwise private arena with a minimum equine working area of 60 X 100 feet. NOTE: Outdoor or open covered designed arenas do not offer the necessary anonymity and privacy required, or protection from inhibiting weather.
- An adequate indoor classroom to facilitate 10 or more people. This classroom must offer privacy, comfort, and a non-clinical environment. The classroom must also allow for space to share lunches and/or dinners among students, instructors, and staff.
- A room adequate for individual assessment counseling with students.
- Adequate and clean bathroom facilities.

(highlighting in original)

Willowbend amended its business proposal to address the suspected mistake of including a stipend for students as follows:

- All travel for staff and students, to include a small stipend for students (*"Students, for the purpose of this offer, are those veterans who will participate in and graduate from the 3-Day Intensive Class as part of Phase I."*)
 - While the 3-Day Intensive Class is free of charge to enrolled veterans, costs identified under travel include: housing, travel, meals, and small stipend for incidentals for students graduating from the 3-Day Intensive Class, as well as Herd 2 Human staff providing the 3-Day Intensive Class as part of Phase I.

(highlighting in original) (emphasis added) There were no additional clarifications.

There were five evaluation criteria published in the solicitation:

- A. Qualifications, References, and Experience,
- B. Therapeutic Methods,
- C. Facility,
- D. Marketing Plan to Solicit Participants and
- E. Cost.

The evaluators' score sheets did not provide evaluators the opportunity to evaluate criteria D, the Marketing Plan. A marketing plan was included in the original proposal but there is no indication that it was even reviewed during the evaluation. Section 11-35-1530(7) requires: "Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously." Modification of the

evaluation criteria after the receipt of proposals is a violation of the Code. However, since only one proposal was received, this did not directly affect the award decision. It is significant in this case because VRD alleged a failure to submit a Marketing Plan as one of the reasons for terminating the contract. There will be more discussion about this below.

Two evaluators reviewed and scored Willowbend's proposal against all the criteria except the marketing plan and provided brief comments explaining their rankings. Two evaluators did not evaluate the marketing plan or the cost. One of these two explained that she did not evaluate the cost because she was not provided the cost information, so she awarded zero points. There is nothing in the record to indicate that this omission was acknowledged or addressed. The other evaluator was the procurement officer and she awarded points for Technical, Therapeutic, and the Facility criteria, and zero points for cost. However, she provided no comments explaining her rankings. Section 11-35-1530(9) requires:

Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration the evaluation factors set forth in the request for proposals, unless the procurement officer determines to utilize one of the options provided in Section 11-35-1530(8). The award of the contract must be made on the basis of evaluation factors that must be stated in the RFP. The contract file must contain the basis on which the award is made and must be sufficient to satisfy external audit.

The three evaluators that commented noted that the methodology Willowbend would use to deliver the services was unclear. In addition, one evaluator expressed confusion about the inclusion of a three-day intensive class as part of Willowbend's proposal stating: "Did not understand the need for a 3-day intensive class as part of Phase 1 with stipends for incidental costs, and how that class interfaces with the six-week program schedule." VRD sought clarifications on September 20, 2018, and Willowbend amended its proposal on September 21, 2018. And while the evaluator score sheets are undated, the reference to the six-week class indicates that final evaluation occurred after September 21, 2018 and the evaluators still had questions and concerns about Willowbend's proposal. VRD, however, sought no additional clarifications. This is unfortunate as these two issues played greatly in the termination of this contract.

Notwithstanding these concerns, Willowbend's proposal was determined to be responsive, and negotiations began on October 26, 2018. During negotiations the parties agreed that Willowbend would provide a copy of a signed contract with the Clemson University T. Ed Garrison Arena to host the pilot program, that Willowbend would send itemized invoices when requesting payment to substantiate program expenditures, that Willowbend would send an itemized invoice for the start-up costs of \$25,000, and that Willowbend would be responsible for any stipends associated with the three-day intensive program.

The negotiations were completed, and Willowbend was awarded the contract on November 18, 2018. The contract required Willowbend to develop the Phase I pilot equine therapy program, to graduate an unspecified number of students from one class of unspecified duration, provide a licensed therapist to produce an assessment of each participant, develop an individualized treatment plan, and assesses progress throughout the therapy by November 19, 2019, at a cost of \$250,000. The Record of Negotiation does not address the evaluator's confusion about the therapeutic methods of how the three-day class interfaces with the six-week program schedule.

A post-award, pre-performance meeting was held on December 12, 2018 during which, according to both parties, a number of issues were discussed, including the three-day versus six-week classes, but there no minutes, contemporaneous notes, amendments, modifications, or change orders in the record that might shed light on what was discussed or resolved. Sworn affidavits from those in attendance only indicate that this issue was not resolved.

Willowbend conducted two concentrated three-day courses between January 22 and 27, 2019. Twelve veterans attended the courses and ten completed the course. Three VRD employees monitored a portion of one of the classes: Ms. Felicia Johnson, Commissioner; Ms. Artemus; and Ms. Liswoski.

Willowbend delivered final documentation to VRD on March 6, 2019 that restated each requirement from the solicitation and indicated Willowbend's completion of the requirement. The documentation included pre- and post-program evaluations, assessments, and an invoice for the balance of the contract.

On March 15, 2019, VRD sent Willowbend an “Open Letter” alleging the following seven deficiencies in Willowbend’s performance and demanding corrective action within 10 days:

1. No marketing plan or documentation showing how referrals are generated for this program has been submitted to SCVRD.
2. No liability insurance certificate has been received by SCVRD.
3. No individualized treatment plan and assessment of progress has been submitted to SCVRD.
4. No 6 week therapy program has been completed.
5. The horses utilized in the 3-day intensive program were not Clemson University horses, as SCVRD was told would be utilized. SCVRD needs certification/proof the horses used are suitable for this type of therapy and have been well maintained.
6. Proper Itemized invoices have not been submitted to SCVRD for payment.
7. Contractor has not provided to SCVRD copies of each therapy participant's fully executed "Release and Hold Harmless" agreement.

(Attachment 2)

On March 21, 2019, Willowbend responded with explanations and documentation supporting its position that each allegation lacked merit. (Attachment 3)

VRD terminated the contract with Willowbend on April 1, 2019, more specifically defining six alleged deficiencies cited in the “Open Letter;” while dropping the issue of the ownership of the horses. (Attachment 4) Willowbend requested resolution of this controversy on April 3, 2019.

VRD’S STATED GROUNDS FOR TERMINATION

The **first deficiency** cited in the “Open Letter” alleges that Willowbend failed provide a marketing plan or documentation showing how referrals would be generated for the program:

Deficiency: No marketing plan or documentation showing how referrals are generated for this program has been submitted to SCVRD.

Contract Reference: This is a requirement in Section III of the solicitation, bullet point #5, on page 14

Remedy: Please submit this information to SCVRD.

(emphasis in original)

The contractual requirement found on page 14 of the solicitation states:

- Generate referrals to the program and arrange and schedule member participation in the program: Contractor is responsible for all marketing to solicit participants for the program. Contractor is also responsible for assessing each participant for appropriateness for equine-assisted therapy.

Willowbend's original proposal included a section titled Proposal Bid Marketing Strategy Plan - Tactical Marketing Plan. The "Tactical Marketing Plan" set out the marketing objectives, target market, twenty referral sources, and marketing approach. The marketing plan also included a section titled "Process" which identified the process it would use to develop contact lists, pre-event follow-up, post event follow-up, and a section titled "Opportunity Qualification Process and Criteria" that was populated with "TBD" (To Be Determined). The marketing plan identified specific individuals and their roles with estimated work hours "TBD." In terminating the contract, VRD modified the deficiency by adding the following additional explanation:

VR has not received a completed marketing plan, as required by the contract. The "Process" submitted in contractor's proposal is listed as "TBD" which does not show any solid marketing plan for the program or referrals. VR has been invoiced for marketing & recruitment, but there is no evidence that either have taken place.

In the "Open Letter" VRD claimed it had not received the marketing plan. In the Termination Letter VRD claimed it had not received a completed marketing plan.

As cited above, the evaluation criteria published in the solicitation included evaluation of the marketing plan. However, the evaluators were not provided the opportunity to evaluate the marketing plan. If the marketing plan had been evaluated as set forth in the solicitation, this lack of detail could have been clarified during discussions or negotiations. There is no requirement in the contract for Willowbend to submit a fully developed or modified marketing plan for VRD approval as a final deliverable. VRD accepted Willowbend's marketing plan as written. Termination for this ground is not justified.

The **second deficiency** in the "Open Letter" states that no liability insurance certificate had been received:

Deficiency: No liability insurance certificate has been received by SCVRD.
Contract Reference: This is a requirement of Section III of the solicitation, bullet point #9-subsection 4 on page 15. It is also required in Section V under "Qualification-Special Standards of Responsibility (Mar 2015) on page 18. Also,

please see clause titled "Contractor's Liability Insurance-General" in section VIIA beginning on Page 24.

Remedy: Please submit this certificate to SCVRD.

(emphasis in original)

An examination of the contract references reveals that Section III, bullet point #9, subsection 4 on page 15 requires each participant to sign a Release and Hold Harmless agreement before participating in this program. This alleged deficiency is repeated as a separate cause for termination and will be addressed below.

The Special Standard of Responsibility states:

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

(a) This section establishes special standards of responsibility. UNLESS YOU POSSESS THE FOLLOWING MANDATORY MINIMUM QUALIFICATIONS, DO NOT SUBMIT AN OFFER:

Contractor directly providing Equine Therapy to participants must be at a minimum a Licensed Therapist and must have Professional Liability Insurance of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

A special standard of responsibility is a mandatory requirement and should have been verified prior to award as part of the determination of responsibility required by Section 11-35-1810. In submitting its request for resolution, Willowbend included a Certificate of Liability Insurance for All Ways Tranquil, LLC dated January 4, 2019 that meets the special standard of responsibility listed in the solicitation.

The requirement for contractor's liability insurance can be found on page 24 of the solicitation:

CONTRACTOR'S LIABILITY INSURANCE - GENERAL

1. Without limiting any of the obligations or liabilities of Contractor, Contractor shall procure from a company or companies lawfully authorized to do business in South Carolina and with a current A.M. Best rating of no less than A: VII, and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work by the Contractor, his agents, representatives, employees or subcontractors.

[Solicitation, Page 24] (emphasis added)

As stated in the opening paragraph of this contractual requirement, the purpose of liability insurance is to insure against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work and the results of that work. Verifying contractor's liability insurance should have occurred prior to performance when a deficiency could be corrected, when the State could be protected as intended. Verifying liability insurance after performance is akin to closing the barn door after the horses have escaped. Including it as a cause for termination gives the appearance of searching for an excuse to terminate the contract. Willowbend provided a certificate of insurance in response to the "Open Letter." VRD found fault with it and amended the deficiency in the Termination Letter as follows:

- Insurance Certification for Herd 2 Human does not indicate Workers Compensation and Employer's Liability Coverage, which is required by the contract.

However, this fails to substantiate the deficiency as Section 42-1-360 exempts casual employees and certain other employments:

This title does not apply to:

- (2) any person who has regularly employed in service less than four employees in the same business within the State or who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period;

Willowbend does not employ four employees in South Carolina and consequently is not required to have Workers Compensation insurance.

This cause for termination is not justified.

The **third alleged** deficiency cited in the "Open Letter states:

Deficiency: No individualized treatment plan and assessment of progress has been submitted to SCVRD.

Contract Reference: This is a requirement of Section III of the solicitation, bullet point #9 on page 15.

Remedy: Please have therapist submit the requested information on proper forms to SCVRD.

This requirement is expressed in the following two statements from the solicitation:

The Contractor shall provide assessment of each participant by the therapist who develops an individualized treatment plan and assesses progress throughout the therapy.

[Solicitation, Page 15]

Staff to manage the program: Instructors shall be at a minimum a Licensed Therapist, certification by PATH International (formerly NARHA), Eagala or other equine therapy certification preferred, but not required.

[Solicitation, Page 14]

In its original proposal, Willowbend provides:

The clinical program aspect of this project and the marketing will be managed by All Ways Tranquil, LLC, more specifically by Rhonda Pitts, M. Ed., LPC. Ms. Pitts will also be the licensed Counselor providing all assessments, treatment plans, and therapy for the Veterans who are dealing with the debilitating effects of PTSD.

Ms. Pitts resume was included in Willowbend's proposal. As part of its final deliverable, Willowbend submitted a Pre-Program Assessment Report indicating that it was provided by Rhonda Pitts, the All Ways Tranquil therapist identified in its proposal as the service provider. Willowbend also submitted a Counselor's Final Report indicating that it was also prepared by All Ways Tranquil, LLC. These reports identified participating veterans by reference, their initial diagnosis, and the condition after the three-day course.

In response to the "Open Letter," Willowbend stated:

You received a treatment plan with Ms. Pitts' work provided with delivery of Phase I. However, the contract specifically states under Scope of Work "Evaluations" that the treatment plan is to remain the sole property of the vendor. *(Evaluations: Treatment Plan, Pre and Post Assessments are to be completed by the Therapist. All information remains in the sole possession of the vendor, except those reports required by SCVRD.)*

Note: As we are all fully aware, this is a pilot program, a "test program" to develop the Herd 2 Human program to best provide for the people of SC. While we have done our best and will continue to do our best to design provisions for individual therapy plans, doing so is completely dependent on the volunteer students who participate in the program. We have no right to insist that students submit to an individual treatment plan. Many already see their regular counselors. It may be inappropriate to suggest they submit to our plan. Thus, there may simply be no individual plan to provide to SCVRD. If this continues to be your

concern, it is certainly something we need to discuss with those qualified to help us determine the best solution as we continue on with this pilot program, but it should not be considered a deficiency in my performance.

Although it is my understanding from the RFP (as cited above) that Preclass and post-class assessment were to remain in my possession, I submitted those reports to SCVRD in my delivery of Phase I because my students said they had no problem with me doing so.

VRD amended this deficiency in the Termination Letter stating:

Pre-Program Assessment report & the Counselor's Final Report are Incomplete. They are not signed by the counselor and are not on any official letterhead or proper professional forms. Counselor reports must be certified by a licensed counselling professional and completed in accordance with appropriate professional. therapeutic standards.

The contract prescribed neither the form nor the format for these reports, leaving it to the discretion of the contractor. However, these being professional clinical assessments, a written signature by a certified professional is warranted. This issue could have been easily cured had this issue been identified in the "Open Letter."

In the "Open Letter" VRD alleged these reports were not submitted; in the Termination Letter VRD alleged they were incomplete.

Termination for failure to cure this deficiency is not warranted.

The **fourth deficiency** alleged in the "Open Letter" states:

Deficiency: No 6 week therapy program has been completed.

Contract Reference: Per Discussion Letter sent 09/19/2018 and your response of "Amendment Attachment "A-I" to August 30, 2018 Technical Proposal"-The program schedule states you will complete a program with one (1) two-hour (2) session per week for six (6) weeks.

Remedy: Please complete and successfully graduate at least one 6 week program and submit the required weekly progress reports.

Verification: SCVRD will confirm with facility that the program is taking place each week and will confirm with therapist the weekly progress report validity....

Unless corrective action is taken, your continued non-performance may lead to a finding of "default" and result in contract termination for cause. Therefore, you have up to 10 days after receipt of this notice to:

1. Correct these conditions, plus
2. Provide this office a written explanation of the cause(s) and measures taken to prevent a recurrence.

[Open Letter, Page 3]

The contract is for a duration of one year and, at the time of the “Open Letter,” Willowbend still had ample time to perform. VRD’s demand that a six-week class be performed in ten days is unreasonable.²

Willowbend responded:

4: There was **NO** six-week class offered in Phase I Scope of Work. Please review the Amendment to the Business Proposal that was submitted per your request highlighting what was offered. It is clearly stated that I would provide a three-day class. I have attached the Amendment to the Business Proposal for your convenience.

You reference Attachment A-1 to the Technical Proposal. Again, A-1 was submitted at your request to describe what the Herd 2 Human program curriculum looks like. A-1 was therefore submitted only to indicate that the three-day class would be compatible with what is taught in a six-week class, but condensed into three-days. It is evident that you understood this because you and I agreed we could take the weekly report requirement out of the RON given that it did not apply to a three-day class. This was also made very clear at the December 10 meeting with VR staff and everyone agreed that they understood.

I have reiterated this several times in previous correspondence and I thought I explained it well at our December 10 meeting, but I will say it again. Once we move to Phase II and begin training instructors, those instructor trainees will be providing six-week classes as part of their certification process. It was my intent to be started with Phase II by now which would have graduated at least one six-week classes by June 30, 2019. This **may** still be possible if SCVRD accepts my delivery of Phase I and agrees to begin Phase II immediately.

(There is no contractor deficiency to be corrected in #4.)

² After Willowbend had responded to the “Open Letter,” VRD responded on March 21, 2019 and indicated that the deadline “is when we require your response, not when we need you to complete the 6-week program.” This email contradicts the “Open Letter,” which demanded that Willowbend “correct these conditions,” including the completion of the six-month course, within ten days of receipt of notice.

In the Termination Letter VRD restated its claim that during discussions, Willowbend had amended its proposal to include a 6-week class:

In the Solicitation SOW, VR required the successful bidder to graduate 1 class of therapy participants and the submission of weekly progress reports on participants, as acknowledged and agreed to in your Technical Proposal. In VR's discussion letter of 09/19/18, you were asked to provide a more detailed overview of the proposed therapy program. In your response dated 09/21/18, you submitted "Amendment Attachment A-1 to August 30, 2018 Technical Proposal" that provided a Program Schedule for a 6 week class. You also submitted this same program schedule in your e-mail to Rita Artemus on 03/06/19 as attachment labeled "H2H Curriculum Att-D" when requesting final payment for your services. VR would not have requested weekly progress reports for a program that was less than 1 week in duration. You are expected to complete a 6 week class per the curriculum submitted. Your original e-mails with those attachments are attached to this report for your review. No Phase II was discussed or outlined to date by VR. This proposal is solely based on Phase I

The requirement published in the solicitation states:

Performance: Contractor shall develop Phase I of a pilot equine therapy program focused on addressing PTSD in veterans, and successfully graduate at least one (1) class of therapy participants through the program.

[Solicitation, Page 14]

The solicitation does not specify a duration for the class. This was followed by a list of specific deliverables that included a requirement that the contractor provide:

- Instruction using an approved, outlined curriculum that includes an on-the-ground therapy model, with a classroom component, that provides strategies and techniques for participants with PTSD to increase their self-awareness, confidence, trust, and improve their communication and relationship skills through interspecies communication with horses.

[Solicitation, Page 14]

In the Executive Summation of its original proposal Willowbend proposed to develop a program based on a Herd-2-Human program it had established in Montana, that it had previously provided a three-day intensive pilot program at Lander University in Greenwood, South Carolina, and that it was "thrilled that funding has been provided for another PTSD pilot program and Willowbend Farm once again has the opportunity to propose the Herd 2 Human program to South Carolina."

[Willowbend's Proposal, Page 7]

There is no other reference to a class duration in Willowbend's proposal.

Willowbend included a line item in its business proposal for:

All travel for staff and students, to include a small stipend for students

VRD identified the inclusion of a stipend for students as a potential mistake and offered Willowbend an opportunity to correct this issue through discussions under Regulation 19-445.2095(I).

2. We suspect that your proposal includes the following mistakes. If a mistake was made, you may correct the mistake by submitting revisions to any aspect of your proposal, but only to the extent such revisions are necessary to resolve the mistake identified. If no mistake was made, please confirm that no mistake was made.

a.) In the Business Proposal section of your proposal you state under "Necessities for Service Provision Includes: All travel for staff and students, to include a small stipend for students." Considering there will not be any student participants and this program will be provided free of charge, could this have been mistakenly placed in the proposal?

In response, Willowbend amended its business proposal by adding the following:

- All travel for staff and students, to include a small stipend for students (*"Students, for the purpose of this offer, are those veterans who will participate in and graduate from the 3-Day Intensive Class as part of Phase I."*)
 - While the 3-Day Intensive Class is free of charge to enrolled veterans, costs identified under travel include: housing, travel, meals, and small stipend for incidentals for students graduating from the 3-Day Intensive Class, as well as Herd 2 Human staff providing the 3-Day Intensive Class as part of Phase I.

(highlighting and emphasis in original) [Amendment to 8-30-18 Business Proposal]

VRD also requested Willowbend more fully describe the therapeutic methods that would be employed:

- a.) Performance: Contractor is required to develop a Phase I of a Pilot Equine Therapy Program focused on addressing PTSD in veterans, and successfully graduate one (1) class of therapy participants through the program.**

In your proposal you did not describe the therapeutic methods that will be used in this program; you just stated that you will develop therapeutic groups and classes. We will need to know exactly what those groups and classes will entail, i.e.: will

it be all groundwork, will participants actually ride horses, what will the group classes involve? Please provide us with a more detailed overview of the proposed therapy program.

In response, Willowbend amended its technical proposal:

- Design and development (Phase I) of a Herd 2 Human PTSD equine therapy pilot program specifically for the State of South Carolina consistent with the Herd 2 Human therapy program schedule attached hereto as attachment "A-1")

(highlighting in original)

Attachment A-1 is the outline of a six-week program with one two-hour class each week and describes the activities that would be conducted each day.

VRD contends that the inclusion of Attachment A-1 committed Willowbend to conduct a six-week class in addition to the three-day class. Willowbend contends that the inclusion of Attachment A-1 was only intended to show the therapeutic methods and not a commitment to conduct a 6-week class in addition to the three-day class.

During the evaluation, and prior to negotiations, one of the evaluators questioned the inclusion of the three-day class:

Did not understand the need for a 3-day intensive class as part of Phase I with stipends for incidental costs, and how that class interfaces with the six-week program schedule.

This issue could have been clarified through another round of discussions but was not. It could have been clarified during negotiations but was not. Both parties agree that a post award, pre-performance meeting was held on December 12, 2018, in part, to resolve this issue. Neither party presented any minutes, contemporaneous notes, amendments, modifications, or change orders from this meeting that would reflect any resolution. The issue is hotly disputed. In sworn affidavits, VRD maintains that the parties agreed that the three-day class was in addition to the six-week class. Willowbend maintains that the parties agreed on the three-day class only. The CPO hosted a conference call and conducted two virtual hearings attempting to resolve this issue and concludes that the contract was ambiguous as to whether it required an additional six-month class.

“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.” *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). If a court decides the language is ambiguous, it may receive evidence to determine the parties’ intention. *Id.* This determination is a question of fact. *Id.* Ambiguities in an agreement are construed against the drafter or the party “responsible for the verbiage.” *Mathis v. Brown & Brown of South Carolina*, 389 S.C. 299, 310, 698 S.E.2d 773, 778 (2010); *Canal Ins. Co. v. National House Movers, LLC*, 414 S.C. 255, 266, 777 S.E.2d 418, 423 (Ct. App. 2015).

The solicitation did not require a three-day class, a six-month class, or both. It merely required that “the contractor successfully graduate at least one (1) class of therapy participants” within a year. [Solicitation, p. 14]. Willowbend’s amended proposal, however, offered two different types of class schedules. Its amended technical proposal offered a six-week class, while its amended business proposal offered a three-day class. This created an ambiguity, which became part of the contract through the “CONTRACT DOCUMENTS and ORDER OF PRECEDENCE” clause. *Id.*, p. 15.

Although VRD should have resolved the ambiguity prior to performance, Willowbend drafted the amended technical and business proposals that introduced the ambiguity into the contract. The CPO finds that Willowbend, as the drafter “responsible for the verbiage,” is likewise responsible for the ambiguity, and the CPO construes the contract in VRD’s favor. The contract required a six-month course. However, given the confusion surrounding the pre-performance meeting, with affidavits and testimony giving a “he said, she said” version of events, and given that the contract still had roughly eight months remaining when VRD demanded a six-month course within ten days, any default on the part of Willowbend was excusable, and it should have been given a reasonable opportunity to cure. VRD’s termination for this and other reasons lacked good cause. There was no ground justifying termination.

The **fifth deficiency** alleged by VRD was that Willowbend failed to provide itemized invoices as required in the Record of Negotiations. The Open Letter states:

Deficiency: Proper Itemized invoices have not been submitted to SCVRD for payment.

Contract Reference: In the Record of Negotiations it states that vendor would submit itemized invoices to SCVRD when requesting payment to substantiate all program expenditures. Please see the clauses titled "Payment and Interest (Feb 2015)" on page 22 and "Pricing Data-Audit-Inspection (Jan 2006)" on page 29 of the solicitation.

Remedy: Please provide proper itemized invoices to show all program cost on the invoice submitted for payment.

Willowbend argues:

The argument over production of my receipts identifying the details of my course of doing business (my trade secrets and intellectual design) seems to be an ongoing and unjustified debate.

a) There is nothing in the contract under payment that requires me to provide receipts to constitute my invoices to be "proper invoices".

"(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract."

SCVRD attempted to require that I provide receipts in the first RON. I objected so the requirement for receipts was removed from the final RON we signed.

Furthermore, we had this discussion again on Dec. 10, 2018 at VR's office and all agreed that I was not required to provide receipts for my invoices to be proper. I agreed to itemize any interim invoices to identify work progress and expenses. But even when I did, VR refused to pay that invoice.

In the Termination Letter, VRD restates this deficiency to include the following:

You submitted an invoice dated 03/06/2019 for the development of the Herd 2 Human Program for \$225,000 but you have not completed all contractual requirements. As a state agency, VR requires substantiation of the cost of certain items on your invoice. Your invoices also total an amount over the \$250,000 awarded per this contract. A detailed list of the invoice deficiencies will be sent to you before a payment is made.

(emphasis added)

The last sentence in the cause for termination states: A detailed list of the invoice deficiencies will be sent to you before a payment is made. This detailed list of deficiencies should have been included in the "Open Letter" so that Willowbend would have had an opportunity to cure them and avoid termination for this reason. Failure to provide full disclosure of all alleged deficiencies and give the contractor a reasonable opportunity to cure them in the "Open Letter" is unreasonable.

In justifying its demand for receipts and supporting documentation, VRD mistakenly relies on two provisions in the contract. The first is the Payment and Interest clause which in pertinent part states:

The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract.

[Solicitation, Page 22]

This clause does not define a proper invoice, only that the State will pay upon receipt. The balance of this clause is dedicated to the payment of interest.

The second clause VRD relies upon is the Pricing Data-Audit-Inspection clause which in pertinent part states:

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to Contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with Contractor which exceeds \$100,000.

(emphasis added)

This is taken from Section 11-35-1830 of the Code which provides that if the total contract price exceeds \$500,000, or the total cost of a change order or modification exceeds \$100,00, and there is not adequate price competition, the contractor must provide cost or pricing data and shall certify that, to the best of his knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of mutually determined specified date prior to the date of the pricing of any contract awarded so that the State can ensure that the price is fair and reasonable prior to award. In this case, there was only one offeror so there was not adequate price competition, but the total contract price was only \$250,000 and there is no change order or contract modification.

In the Record of Negotiations, the parties defined a proper invoice as one that is itemized:

Willowbend Farm agrees to send itemized invoices to SCVRD when requesting payment to substantiate all program expenditures.

While best practices and governmental accounting principles require documentation to substantiate invoiced amounts, this contract does not require receipts or other substantiating

documentation. The contract requirement is for itemized invoices. This is cause for termination is not supported by the facts.

The **sixth deficiency** alleged by VRD was that Willowbend failed to provide signed copies of required Release and Hold Harmless Agreements with class participants. The solicitation clearly required that:

- Each participant must sign a “Release and Hold Harmless” agreement that acknowledges the inherent and potential risks of engaging in Equine-related activities, which releases both vendor and SCVRD from any liability.

[Solicitation, Page 15]

Willowbend responded to the “Open Letter:”

We do have signed Assumption of Risk Agreements with each student. If it is necessary in resolving your concerns, and, I can obtain permission from each student, I will provide SCVRD with copies of their agreements. Otherwise, I will consider providing you with redacted copies to protect the privacy of the students.

This deficiency is restated in the Termination Letter:

As stated in the Scope of Work on page 15 of the solicitation, you are required to have each participant sign a Release and Hold Harmless Agreement, which release both Herd 2 Human as well as SCVRD from any liability. VR requires and is entitled to copies of all such hold harmless agreements releasing VR from liability. The only statement in the Scope of Work that says all reports are to remain with the vendor are relevant to the assessments only and specifically says “except those reports required by “SCVRD”.

The contract required signed Release and Hold Harmless Agreements that release both Willowbend and VRD. Willowbend states that it has signed agreements. While the contract did not specify which party was to retain these agreements or get copies, VRD is a named party to these agreements, and it should receive a copy of these agreements. This cause for termination is not justified.

DECISION

South Carolina Vocational Rehabilitation Department and Willowbend Farms entered into this contract to establish a pilot program to provide equine-assisted therapy to persons diagnosed with PTSD, with an emphasis on providing services to Veterans and graduate one class through the program. The Legislature appropriated \$500,000 for VRD to develop an equine therapy program with an emphasis on serving veterans with Post-Traumatic Stress Disorder. VRD issued a Request for Proposals for an Equine Therapy Pilot Program even though it is only authorized to award contracts up to \$250,000. The RFP was poorly conceived and poorly written. The only substantive deliverables were to graduate an unspecified number of students from one class of unspecified duration and provide pre and post participation assessments of the participants by a licensed therapist. The pilot program was to be located in the Upstate of South Carolina, “but will contemplate the expansion of a successful program to other locations in the state.” However, the solicitation does not provide a contractual basis for expanding a successful pilot, does not solicit pricing for an expansion, and does not acquire the right to own or use the concepts or materials employed in the pilot program. Willowbend was the only offeror to submit a proposal. Willowbend’s offer was also poorly written, lacking specific detail about the duration or size of the class offered or any detail about the therapeutic methods it would employ. Further, Willowbend’s amended technical proposal introduced the ambiguity which became the primary issue of dispute between the parties.

According to a report by the Office of the Inspector General:

Through interviews and a review of the SCVRD procurement file, the SIG determined the former SCVRD employee authored the bid proposal and the Willowbend owner submitted the bid proposal on 8/31/2018 for \$250,000 – the same as SCVRD’s maximum certification level of procurement certificate of authority.

(See https://oig.sc.gov/sites/default/files/Documents/Reports/2019/VR-Final_Equine_Therapy_Report.pdf last viewed September 9, 2021). The former VRD employee was also the licensed therapist retained by Willowbend for this contract.

The evaluators failed to evaluate the proposal using only the criteria stated in the request for proposals. Identified concerns and questions by the evaluators were not addressed. The decision to award to the “responsible offeror whose proposal is determined in writing to be the most advantageous to the State” was not properly documented. Willowbend was awarded the contract for \$250,000 to provide a licensed therapist instructor, a training site, horses, treatment plan, pre and post assessments for each veteran completed by the therapist, weekly progress reports, and either a three-day intensive class of approximately 24 hours or a three-day intensive class (24 hours) and a six-week class (12 hours) for a total of approximately 36 hours of therapy.

Under the solicitation, VRD had the right to terminate the contract for cause if the contractor (a) fails to perform the contract within the time specified, (b) fails to make progress so as to endanger the performance of the contract, or (c) fails to perform any material provisions of the contract. [Solicitation, p. 26]. Here, VRD’s “Open Letter” demanded the following:

- a “completed marketing plan” that was not required by the solicitation;
- proof of workers compensation insurance that was inapplicable to Willowbend;
- a particular format of assessments not required by the solicitation;
- performance of a six-week course within ten days when there was roughly eight months left on the contract; and
- documentation for invoices not required by the solicitation.

Taken together, these demands—which insisted on extra-contractual performance and denied a reasonable opportunity to cure the six-month issue—were unreasonable and not grounds justifying termination for cause.³ And given the confusion over the six-month issue at the pre-performance meeting, where each side seemingly walked away with a completely different idea of what was required, any default by Willowbend was excusable. Willowbend should have been given a reasonable opportunity to cure the default.

³ Arguably, some of these demands also lacked good faith.

The solicitation provides that after termination if it is determined that the contractor was not in default or that the default was excusable, the termination for cause will be the same as a termination for convenience:

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the Contractor's rights under the Disputes clause.

[Solicitation, Page 26]

The CPO finds that the solicitation includes a termination for convenience and the termination for cause is changed to a termination for convenience effective March 15, 2019, the date of the Open Letter.

REMEDY

The solicitation's "TERMINATION FOR CONVENIENCE" clause provides a mechanism for determining what the State owes a contractor when it terminates for convenience. Under the relevant portions of that clause, VRD is required to pay contract prices for supplies and services already delivered, costs reasonably incurred in performing the terminated portion of the work less amounts paid or to be paid, and any other reasonable costs resulting from the termination. While VRD is not required to pay for a six-month course that was never performed, it must pay for the services already rendered and the other costs allowed by the solicitation.

Willowbend's proposal included a budget/pricing that included three categories: program development, necessities for service provision, and assessment and counseling services. While the CPO finds that the quoted prices appear high, and that the procurement officer should have determined whether the price was fair and reasonable prior to award, VRD accepted the proposal that included this budget and pricing. The budget is itemized thus:

Program Development	Price
South Carolina Herd 2 Human PTSD program development—equine	\$100,000
South Carolina Herd 2 Human PTSD program development— clinical/therapeutic	\$30,000
Marketing Plan development	\$7,000
Total Services for Program Development Costs	\$137,000
Necessities for Service Provision	
Facilities Rental	\$50,000
License Fees	\$1,000
Equipment Rental	\$10,000
Travel	\$10,000
Marketing	\$15,000
Insurance(s)	\$20,000
Total Services Provision Necessities Costs	\$108,000
Assessment and Counseling Services	
LPC Assessment and Counseling Services	\$5,000
Total Services for Assessment and Counseling Services	\$5,000
Total	\$250,000

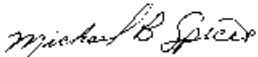
VRD maintains Willowbend failed to perform these services and is entitled to no further payment. Willowbend contends its performance is complete and it is due the balance of the contract price. Neither is correct. As previously discussed, the amount owed to Willowbend is calculated according to the termination for convenience clause.

Willowbend completed the program development stage of the contract. According to the budget the contract price for those services is \$137,000. It performed some, but not all, of the remaining services. To determine the contract price for those services the CPO looks to the invoice Willowbend sent shortly after providing them. Willowbend completed two three-day classes by

January 27, 2019. On February 4, Willowbend submitted an invoice that claimed it was due \$53,200 for those classes. The CPO finds that the contract price for services completed is therefore \$190,200. There is no evidence before the CPO that Willowbend incurred additional costs to perform the terminated portion of the work, or any other costs resulting from the termination. VRD paid Willowbend \$65,000, leaving a balance due of \$125,200.

As a condition to payment of the amount due, Willowbend must deliver Pre-Program Assessment reports and the Counselor's Final Report and required assessments signed by the licensed therapist, and the Release and Hold Harmless Agreements within 30 days VRD shall pay the balance due— \$125,200 —upon receipt of the documents from Willowbend.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Protest-MMO](#)
To: [MMO - Procurement; Shealy, Voight; Skinner, Gail](#)
Subject: FW: [External] Complaint re Solicitation No
Date: Wednesday, April 03, 2019 3:22:45 PM
Attachments: Record of Negotiations.docx
Rec of Neq 11-14-18 signed by both.pdf
Open Letter .msg
RE Response to J Coleman 3-21-19 email.msg
Amendment to 8-30-18 Business Proposal.docx
Insurance cert.pdf
CertificateOfInsurance1716.pdf
Contract #4400020062.msg

From: willowbendfarmmt@gmail.com
Sent: Wednesday, April 3, 2019 3:22:21 PM (UTC-05:00) Eastern Time (US & Canada)
To: Protest-MMO
Subject: [External] Complaint re Solicitation No

Dear Sirs or Madams,

Below is a summary of my complaint against Ms. Jennifer Coleman, SCVRD Procurement Officer. I will start with a little history explaining how this relationship developed.

In 2017-2018 SC Ways and Means Committee (Mike Pitts) appropriated \$500,000 from SCVRD to Lander University earmarked for Herd 2 Human (H2H) to develop a H2H pilot program in SC. That never happened and it is yet to be determined where that \$500,000 was spent.

The SC Ways and Means Committee (Mike Pitts) appropriated \$500,000. For 2018-2019 to create an equine therapy pilot program through SC Vocational Rehabilitation Department (SCVRD)

It is well documented that I bid and won the award to develop the Herd 2 Human (H2H) equine program for SCVRD.

In order to submit my bid, I was required to provide certain proof of ability to bid, such as proof of insurance. Ms. Coleman now, after accepting that I provided everything necessary to satisfy the RFP which included proof of insurance, claims I didn't provide proof of insurance.

After I submitted my bid, SCVRD (Ms. Coleman) insisted on being involved in selecting the venue where I would perform my work and required that I provide them with a contract committing me to the venue she approved. SCVRD exercised supervision and control over the performance of my work in violation of the contract. Because I was committed to the bid and making H2H available to the people of SC, and I felt I could temporarily live with allowing them to participate in choosing an arena for the one class required in the RFP, I allow their interference. However, since delivering Phase I and an invoice, Ms. Coleman continues to exercise supervision and control over my work by insisting that I am in default of the scope of work because I didn't provide; receipts for every expensed I incurred as I performed my work, confidential HIPPA protected student documents, treatment plans, that by contract are to remain in my sole possession, horses owned by Clemson University which was never agreed upon, certification to SCVRD that the horses I used during the program were certified and appropriately matched to my students which SCVRD has no ability to evaluate and is not a term of the contract, and a six-week program that was not part of Phase I. The RFP clearly states in the SOW that I would be required to complete at least one class of therapy participants. I completed two classes because of the number of veterans wanting to attend. I even agreed to return and do another three-day class for a group of female veterans on my own dime. That of course, didn't happen because SCVRD put me in a financial hardship due to their refusal to pay.

I was also required to have a licensed counselor under contract to assist in the development of H2H. SCVRD endorsed ex-SCVRD manager Rhonda Pitts for that position. Ms. Pitts credentials and a copy of her professional liability insurance was submitted with my bid, as required for bid consideration. My bid was offered via US mail rather than electronically. All the supporting and required documents were submitted with my bid via US mail. I have since learned that Ms. Pitts made a proposal to

SCVRD in March 2018, months before SCVRD should have known they would receive an appropriation of funds to develop an equine program. Ms. Pitts had listed me and H2H as her equine program.

SCVRD divided the \$500,000 appropriation into two Phases. Ms. Pitts reassured me that SCVRD was required to break it into two phases in order to receive the funding. The RFP I bid was \$250,000, only for Phase I. Now that I have completed Phase I, Ms. Coleman is terminating my contract for cause claiming numerous false deficiencies in my performance even though everyone agrees the program was a great success. I learned today that SCVRD has asked the legislature for reoccurring funding for the equine program at the same time Ms. Coleman is terminating my contract because she claims pilot program failed because I have not performed adequately.

In Ms. Coleman's "Open Letter" she noticed me that I am deficient in 7 areas of the contract and have 10 days to remedy those deficiencies, some which are impossible to remedy, let alone in 10 days. In Ms. Coleman's next letter, the letter "terminating for cause" Ms. Coleman abandons certain deficiencies listed in her Open Letter, but fabricates new deficiencies not mention in her Open Letter. Again, Ms. Coleman knows very well that her alleged deficiencies are blatantly untrue and are constructed to cause other readers to be misled.

In support of her reasons for terminating my contract, Ms. Coleman lies about not having proof of insurance from me, that I billed more than the contract amount, that I didn't conduct a six-week class, which is not in the contract, that I didn't provide copies of student documents which she knows are protected by HIPPA, that I didn't provide a marketing plan, which is still being implemented in SC, etc. All of these alleged deficiencies are false. Further, Ms. Coleman has abandoned claims of deficiencies from her first list and added new ones in her letter terminating the contract. I responded to each of Ms. Coleman's alleged deficiencies with documented facts proving her alleged deficiencies invalid. (Attached to this email) Ms. Coleman only responded with a letter of termination claiming other terms and language not in the contract. Further, in an attempt to lever me into performing more than what was contracted to do in the Scope of Work, Ms. Coleman misrepresented terms of the contract. When challenged, Ms. Coleman abandoned that argument.

It is important to know that Ms. Pitts was employed by SCVRD when I did the first pilot program at Lander University in 2017. When Lander received the \$500,000, Ms. Pitts retired from SCVRD and bid to provide an equine program for Lander using me and my H2H program to bid. I was told, even though the \$500,000 was earmarked to H2H, I was not qualified to bid to Lander so my only involvement would be to subcontract under Ms. Pitts. There is evidence coming to the surface that Ms. Pitts was directly involved in helping SCVRD draft the RFP. Ms. Pitts and SCVRD staff openly brag that Ms. Pitts was instrumental in certain SCVRD staff promotions prior to her retirement. I make reference to this because it is becoming more and more apparent that Ms. Pitts has had close relationships with SCVRD employees throughout this process and has an interest in pursuing her own equine assisted therapy program. Ms. Pitts even sent a clinical treatment plan to one of my vet students who attended the January H2H classes. Ms. Pitts neglect to respond to my recent correspond with her about Ms. Coleman claiming deficiencies and then terminating the contract when she claims I owe her \$75,000 for her work under the contract in unexplained.

I have done my best to communicate and offer solutions, even concessions, to Ms. Coleman's concerns, but I have never been given an opportunity for a hearing or open a dialog to discuss these alleged deficiencies before Ms. Coleman unilaterally terminated the contract.

As part of the marketing plan, we developed for Phase I, and in anticipation of being paid for Phase I and completing Phase II by November 2019, we scheduled promotions and recruitment of students at a veteran's event in SC April 6, 2019. Ms. Coleman's "termination for cause" has not only put Willowbend Farm in severe financial hardship, leaving us holding the bag for thousands of dollars in expenses, it has interfered with our marketing plan and has disappointed SC veterans and members of the SC Army National Guard who have been waiting for the program to continue.

The reason veterans seek the H2H program is that they are struggling with emotions, many suicidal. It is a travesty that we advertised and offered a program that many testify has helped them and then pull the rug out at the 11th hour because Ms. Coleman fabricates deficiencies in the program that; 1.) are not true, and 2.) had no effect on the success of the pilot program.

Even if Ms. Coleman could prove (which I truly believe she can't) that I erred in understanding the

language of one or more of the technical terms of the contract, the fact remains that the H2H pilot program was very successful and the people of SC want it to return. This is a pilot program. It is was to be a test of certain methods of developing H2H in SC based on the historical success of H2H. Willowbend Farm embraced this opportunity with our eyes wide open to whatever changes we might need to make as we completed Phase I to offer the best program possible for SC over the long haul. Over the course of developing Phase I, we learned of definite changes that need to be made in proceeding with Phase II.

Rather than work with Willowbend Farm to improve on any of Ms. Coleman's alleged concerns, Ms. Coleman targeted any and all possible ways to terminate the contract and defeat the program.

Should you like to learn more about me or the Herd 2 Human program, what has been offered, and how the veterans of SC have responded to Herd 2 Human, please visit our Facebook Page at "Herd 2 Human" or our website listed below.

Respectfully,

Jeff Patterson

Willowbend Farm, Inc.

Jeff & Darlene Patterson

13400 Turah Rd.

Clinton, MT 59825

Ph. (406) 240-8598

Barn: (406) 258-6246

Email: willowbendfarmmt@gmail.com

Web: www.willowbendfarmmt.com

FB: Herd 2 Human



Virus-free. www.avast.com



Contractor Performance Report

Open Letter

Date: 03/15/2019

Contractor: Jeffrey Patterson- Owner of Herd 2 Human
13400 Turah Rd
Clinton, MT 29825

RE: Contract# 4400020062- SCVRD Equine Therapy Pilot Program- "Open Letter"

Dear Mr. Patterson,

You are notified that the State is concerned about your performance of the above referenced contract (or finds your performance of the above referenced contract deficient, etc.) in the following areas:

1. **Deficiency:** No marketing plan or documentation showing how referrals are generated for this program has been submitted to SCVRD.
Contract Reference: This is a requirement in Section III of the solicitation, bullet point #5, on page 14
Remedy: Please submit this information to SCVRD.
Method of Verification: SCVRD will check for any marketing ads/campaigns and will verify referrals.
2. **Deficiency:** No liability insurance certificate has been received by SCVRD.
Contract Reference: This is a requirement of Section III of the solicitation, bullet point #9-subsection 4 on page 15. It is also required in Section V under "Qualification-Special Standards of Responsibility (Mar 2015) on page 18. Also, please see clause titled "Contractor's Liability Insurance-General" in section VIIA beginning on Page 24.
Remedy: Please submit this certificate to SCVRD.
Verification: SCVRD will contact the insurance company to verify all policies are currently active.
3. **Deficiency:** No individualized treatment plan and assessment of progress has been submitted to SCVRD.
Contract Reference: This is a requirement of Section III of the solicitation, bullet point #9 on page 15.
Remedy: Please have therapist submit the requested information on proper forms to SCVRD.
Verification: SCVRD will confirm with therapist that all information is correct.

Felicia W. Johnson, Commissioner

The South Carolina Vocational Rehabilitation Department prepares and assists
eligible South Carolinians with disabilities to achieve and maintain competitive employment

State Office • 1410 Boston Avenue • P.O. Box 15 • West Columbia, South Carolina 29170-0015 • scvrd.net 803-896-6500
(Office) • 803-896-6553 (TTY) • 800-832-7526 (Toll free) • 803-896-6558 (Fax) • info@scvrd.net



4. **Deficiency:** No 6 week therapy program has been completed.
Contract Reference: Per Discussion Letter sent 09/19/2018 and your response of "Amendment Attachment "A-1" to August 30, 2018 Technical Proposal"- The program schedule states you will complete a program with one (1) two-hour (2) session per week for six (6) weeks.
Remedy: Please complete and successfully graduate at least one 6 week program and submit the required weekly progress reports.
Verification: SCVRD will confirm with facility that the program is taking place each week and will confirm with therapist the weekly progress report validity.
5. **Deficiency:** The horses utilized in the 3-day intensive program were not Clemson University horses, as SCVRD was told would be utilized. SCVRD needs certification/proof the horses used are suitable for this type of therapy and have been well maintained.
Contract Reference: In Section III of the solicitation, bullet point #7 on page 15 requires all horses be appropriately matched with participants.
Remedy: Please submit certification/proof that horses are suitable for equine therapy with PTSD participants.
Verification: SCVRD will verify with veterinary clinic caring for the horses and/or horse owner.
6. **Deficiency:** Proper Itemized invoices have not been submitted to SCVRD for payment.
Contract Reference: In the Record of Negotiations it states that vendor would submit itemized invoices to SCVRD when requesting payment to substantiate all program expenditures. Please see the clauses titled "Payment and Interest (Feb 2015)" on page 22 and "Pricing Data-Audit-Inspection (Jan 2006)" on page 29 of the solicitation.
Remedy: Please provide proper itemized invoices to show all program cost on the invoice submitted for payment.
Verification: SCVRD may ask for receipts for audit purposes pursuant to clause "Pricing Data-Audit-Inspection (Jan 2006)" listed in Section VIIB of the solicitation on page 29.
7. **Deficiency:** Contractor has not provided to SCVRD copies of each therapy participant's fully executed "Release and Hold Harmless" agreement.
Contract Reference: Section III, bullet point #9 on page 15 requires all participants to execute an agreement to release and hold harmless SCVRD from liability.
Remedy: Please provide all fully executed release and hold harmless agreements that were signed by the program participants.
Verification: SCVRD may verify the documents with program participants.

Felicia W. Johnson, Commissioner

The South Carolina Vocational Rehabilitation Department prepares and assists
eligible South Carolinians with disabilities to achieve and maintain competitive employment

State Office • 1410 Boston Avenue • P.O. Box 15 • West Columbia, South Carolina 29170-0015 • scvrd.net 803-896-6500
(Office) • 803-896-6553 (TTY) • 800-832-7526 (Toll free) • 803-896-6558 (Fax) • info@scvrd.net



Unless corrective action is taken, your continued non-performance may lead to a finding of "default" and result in contract termination for cause. Therefore, you have up to 10 days after receipt of this notice to:

1. Correct these conditions, plus
2. Provide this office a written explanation of the cause(s) and measures taken to prevent a recurrence.

Responses to this Contractor Performance Report are to be sent to:

Jennifer Coleman
1410 Boston Ave.
West Columbia, SC 29170

OR

via E-mail:
jcoleman@scvrd.net

Any assistance given to you on this contract or any acceptance by the State of either delinquent or non-conforming goods or services will be solely for the purpose of mitigating damages. It is not the intention of the State to condone any failure to fully perform or to waive any rights the State has under contract.

Sincerely,

Jennifer Coleman
Procurement Officer

Felicia W. Johnson, Commissioner

The South Carolina Vocational Rehabilitation Department prepares and assists
eligible South Carolinians with disabilities to achieve and maintain competitive employment

State Office • 1410 Boston Avenue • P.O. Box 15 • West Columbia, South Carolina 29170-0015 • scvrd.net 803-896-6500
(Office) • 803-896-6553 (TTY) • 800-832-7526 (Toll free) • 803-896-6558 (Fax) • info@scvrd.net

Attachment 3

From: willowbendfarmmt@msn.com
To: "Coleman, Jennifer"; Felicia Johnson; J Lisowski@SCVRD.NET; rozzh7@aol.com
Subject: RE: Response to J Coleman 3-21-19 email
Attachments: [image001.png](#)
[7 - Marketing Plan.docx](#)
[Insurance cert.pdf](#)
[Amendment to 8-30-18 Business Proposal.docx](#)

Ms. Coleman, et. al,

I am trying to understand what is going on here with your March 15 Open Letter and your email below. Your Open Letter concludes with telling me I have 10 days to "correct these conditions." I am assuming you mean the 7 deficiencies you listed in your Open Letter.

Your email below is telling me that you are only asking me to indicate how I plan to remedy the 7 deficiencies you allege by March 25th @ 5:00 p.m. but you are not actually asking me to correct the deficiencies by that date and time.

If your email clearly expresses your intent and you are only asking me to tell you how I plan on correcting each of the 7 deficiencies by March 25th, then I believe I have the right to address each of the 7 deficiencies for accuracy or validity before I agree they are valid and I offer a plan to correct them.

I will address each of your 7 deficiencies numerically corresponding with your March 15 Open Letter below:

1: You are in possession of my Marketing Plan which I provided with my proposal. I have attached it here again with this email for your convenience.

Note: We have not only implemented this marketing plan since the onset of Phase I, but have plans to continue to implement this plan. We have been invited and had planned on attending upcoming veteran events in SC, beginning the first week of April to advertise and recruit. Those plans of course are deferred until SCVRD agrees to accept delivery of Phase I and move forth.

(There is no contractor deficiency to be corrected in #1.)

2: I submitted my bid via US mail in hard copy vs. online. That bid included that I was insured. However, in case it is not in your file, I will again provide proof that I have been continuously insured with adequate insurance throughout the performance of this contract.

(There is no contractor deficiency to be corrected in #2.)

3: You received a treatment plan with Ms. Pitts' work provided with delivery of Phase I. However, the contract specifically states under Scope of Work "Evaluations" that the treatment plan is to remain the sole property of the vendor. (*Evaluations: Treatment Plan, Pre and Post Assessments are to be completed by the Therapist. All information remains in the sole possession of the vendor, except those reports required by SCVRD.*)

Note: As we are all fully aware, this is a pilot program, a "test program" to develop the Herd 2 Human program to best provide for the people of SC. While we have done our best and will continue to do our best to design provisions for individual therapy plans, doing so is completely dependent on the volunteer students who participate in the program. We have no right to insist that students submit to an individual treatment plan. Many already see their regular counselors. It may be inappropriate to suggest they submit to our plan. Thus, there may simply be no individual plan to provide to SCVRD. If this continues to be your concern, it is certainly something we need to discuss with those qualified to help us determine the best solution as we continue on with this pilot program, but it should not be considered a deficiency in my performance.

Although it is my understanding from the RFP (as cited above) that Pre-class and post-class assessment were to remain in my possession, I submitted those reports to SCVRD in my delivery of Phase I because my students said they had no problem with me doing so.

(There is no contractor deficiency to be corrected in #3.)

4: There was **NO** six-week class offered in Phase I Scope of Work. Please review the Amendment to the Business Proposal that was submitted per your request highlighting what was offered. It is clearly stated that I would provide a three-day class. I have attached the Amendment to the Business Proposal for your convenience.

You reference Attachment A-1 to the Technical Proposal. Again, A-1 was submitted at your request to describe what the Herd 2 Human program curriculum looks like. A-1 was therefore submitted only to indicate that the three-day class would be compatible with what is taught in a six-week class, but condensed into three-days. It is evident that you understood this because you and I agreed we could take the weekly report requirement out of the RON given that it did not apply to a

three-day class. This was also made very clear at the December 10 meeting with VR staff and everyone agreed that they understood.

I have reiterated this several times in previous correspondence and I thought I explained it well at our December 10 meeting, but I will say it again. Once we move to Phase II and begin training instructors, those instructor trainees will be providing six-week classes as part of their certification process. It was my intent to be started with Phase II by now which would have graduated at least one six-week classes by June 30, 2019. This **may** still be possible if SCVRD accepts my delivery of Phase I and agrees to begin Phase II immediately.

(There is no contractor deficiency to be corrected in #4.)

5: SCVRD has no contractual supervision or control over what horses I use.

- a. We would have liked to use Clemson University horses but no Clemson University horses were available for the three-day classes.
- b. You required in the RON that I provide a contract with Clemson University for the use of their facilities prior to getting started. I provided you with a copy of that contract. You had the opportunity and ability to review that contract. If you will review that contract, again, you will see that there were no provisions for the use of Clemson horses. If you believed I was required under your supervision or direction to the use Clemson horses, that would have been the time to object to that contract.
- c. I am the expert in Herd 2 Human and have the sole responsibility for matching horses with students. SCVRD has no contractual authority or expertise to supervise, evaluate, or control how I perform my specialized work, including but not limited to, how I match horses to students.
- d. The record proves that I provided SCVRD with proof of proper veterinary care and maintenance for the horses we used in the delivery of Phase I.

(There is no contractor deficiency to be corrected in #5.)

6: The argument over production of my receipts identifying the details of my course of doing business (my trade secrets and intellectual design) seems to be an ongoing and unjustified debate.

- a) There is nothing in the contract under payment that requires me to provide receipts to constitute my invoices to be "proper invoices".
"(a) The State shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in

this contract."

SCVRD attempted to require that I provide receipts in the first RON. I objected so the requirement for receipts was removed from the final RON we signed. Furthermore, we had this discussion again on Dec. 10, 2018 at VR's office and all agreed that I was not required to provide receipts for my invoices to be proper. I agreed to itemize any interim invoices to identify work progress and expenses. But even when I did, VR refused to pay that invoice.

- b. In your allegation of deficiency #6 you reference your right to receipts pursuant to contract terms cited on Page 29, headed: "Pricing Data – Audit - Inspection" (2006)" The language you referenced on Page 29 is not relevant to this contract.

"PRICING DATA -- AUDIT -- INSPECTION (JAN 2006)

[Clause Included Pursuant to Section 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. Section 2.101 (2004), prior to either (1) any award to Contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with Contractor which exceeds \$100,000"

A "proper invoice" has been submitted to SCVRD with the delivery of the Scope of Work of Phase I.

(There is no contractor deficiency to be corrected in #6.)

7. Similar to alleged deficiency #3, I am not required under contract to provide VR with copies of "hold harmless agreements." The contract states that I will obtain those agreements from participants. Those hold harmless agreements contain confidential student information not for public record or even SCVRD record.

We do have signed Assumption of Risk Agreements with each student. If it is necessary in resolving your concerns, and, I can obtain permission from each student, I will provide SCVRD with copies of their agreements. Otherwise, I will consider providing you with redacted copies to protect the privacy of the students.

(There is no contractor deficiency to be corrected in #7.)

I have emailed copies of this correspondence to the individuals listed below because I believe we all have a part in helping to create a successful pilot program. I sincerely hope for some input from each of you.

Jeff Patterson



Date: 04/01/2019

Contractor: Jeffrey T. Patterson, Owner of Herd 2 Human
Willowbend Farm
13400 Turah Rd.
Clinton, MT 59825

Re: Contract #4400020062-Equine Therapy Pilot Program – “Termination Letter”

Dear Mr. Patterson,

The above-referenced contract is being terminated for cause, effective 04/01/2019, based on the following unresolved non-performance issues: No marketing plan received, no valid liability insurance has been received, no individualized treatment and/or assessment plan has been received, no six (6) week therapy program will be conducted, proper itemized invoices have not been submitted, no release and hold harmless agreements have been received. This list may not be comprehensive and additional issues may be identified at a later date.

In the “Open Letter” sent to you on 03/15/19, these non-performance issues were listed and you were given until 03/25/2019 at 5:00 pm EST to respond to each issue. In your original response on 03/21/19, you did not provide us an official response and it was not clear if you planned to remedy these issues. In order to be fair and further try to resolve these issues, you were sent clear instructions on what we needed from you as a response. On 03/22/2019, you sent a more formal response in which you listed each deficiency as well as your response to each deficiency. However, your responses were found to be “unacceptable” and I have attached an explanation as to why in the document labeled “Buyer’s Review of Contractor’s Response”.

You may contact me if you wish to discuss the termination and any outstanding claims associated with this contract. I can be reached at 803-896-6520 or via e-mail jcoleman@scvrd.net. SC Vocational Rehabilitation wishes you well in all of your future endeavors.

Sincerely,



Jennifer Coleman
Procurement Office

Felicia W. Johnson, Commissioner

The South Carolina Vocational Rehabilitation Department prepares and assists
eligible South Carolinians with disabilities to achieve and maintain competitive employment

State Office • 1410 Boston Avenue • P.O. Box 15 • West Columbia, South Carolina 29170-0015 • scvrd.net 803-896-6500
(Office) • 803-896-6553 (TTY) • 800-832-7526 (Toll free) • 803-896-6558 (Fax) • info@scvrd.net

Buyer's review of Contractor's Response

Status

Contract: 4400020062

Procurement Officer: Jennifer Coleman

04/01/2019

Status Code Legend

- Acceptable
- Conditional
- Unacceptable

Deficiency: No Marketing Plan or documentation for referrals.	<ul style="list-style-type: none">● VR has not received a completed marketing plan, as required by the contract. The "Process" submitted in contractor's proposal is listed as "TBD" which does not show any solid marketing plan for the program or referrals. VR has been invoiced for marketing & recruitment, but there is no evidence that either have taken place.
Deficiency: No Liability Insurance Certificate has been received.	<ul style="list-style-type: none">● Insurance Certification for Herd 2 Human does not indicate Workers Compensation and Employer's Liability Coverage, which is required by the contract.● No Insurance Certification for the licensed therapist has been submitted, as required by the contract.
Deficiency: No individualized treatment plan and assessment of progress has been submitted.	<ul style="list-style-type: none">● Pre-Program Assessment report & the Counselor's Final Report are incomplete. They are not signed by the counselor and are not on any official letterhead or proper professional forms. Counselor reports must be certified by a licensed counselling professional and completed in accordance with appropriate professional, therapeutic standards.
Deficiency: No 6 week therapy program has been conducted.	<ul style="list-style-type: none">● In the Solicitation SOW, VR required the successful bidder to graduate 1 class of therapy participants and the submission of weekly progress reports on participants, as acknowledged and agreed to in your Technical Proposal. In VR's discussion letter of 09/19/18, you were asked to provide a more detailed overview of the proposed therapy program. In your response dated 09/21/18, you submitted "Amendment Attachment A-1 to August 30, 2018 Technical Proposal" that provided a Program Schedule for a 6 week class. You also submitted this same program schedule in your e-mail to Rita Artemus on 03/06/19 as attachment labeled "H2H Curriculum Att-D" when requesting final payment for your services. VR would not have requested weekly progress reports for a program that was less than 1 week in duration. You are expected to complete a 6 week class per the curriculum submitted. Your original e-mails with those attachments are attached to this report for your review. No Phase II was discussed or outlined to date by VR. This proposal is solely based on Phase I.

<p>Deficiency: Proper Itemized Invoices have not been submitted to SCVRD for payment.</p>	<ul style="list-style-type: none"> You submitted an invoice dated 03/06/2019 for the development of the Herd 2 Human Pilot Program for \$225,000.00 but you have not completed all contractual requirements. As a state agency, VR requires substantiation of the cost of certain items on your invoice. Your invoices also total an amount over the \$250,000 awarded per this contract. A detailed list of the invoice deficiencies will be sent to you before a payment is made.
<p>Deficiency: Release and Hold Harmless Agreements have not been provided to SCVRD.</p>	<ul style="list-style-type: none"> As stated in the Scope of Work on page 15 of the solicitation, you are required to have each participant sign a Release and Hold Harmless Agreement, which release both Herd 2 Human as well as SCVRD from any liability. VR requires and is entitled to copies of all such hold harmless agreements releasing VR from liability. The only statement in the Scope of Work that says all reports are to remain with the vendor are relevant to the assessments only and specifically says "except those reports required by "SCVRD".
	<p>It appears that future negotiations will not result in agreement. These issues have been brought to your attention multiple times and have been explained in hopes to reach an understanding between SCVRD and Herd 2 Human; however, the continued efforts have been unsuccessful.</p>

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.

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**

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.