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INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: Castle Branch, Inc.

Case No.: 2021-123

Posting Date: January 20, 2021

Contracting Entity: Midlands Technical College

Solicitation No.: 5400020587

Description: Student Background Check, Drug Testing and Immunization Tracking Services

DIGEST

Protest that apparent successful bidder is not responsive is granted. The protest letter of Castle Branch, Inc. (CBI) is included by reference. (Attachment 1)

AUTHORITY

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

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

BACKGROUND

Solicitation Issued:	11/19/2020
Amendment 1 Issued	12/02/2020
Intent to Award Posted	12/10/2020
Intent to Protest Received	12/11/2020
Protest Received	12/23/2020

Midlands Technical College (MTC) issued this Invitation for Bids (IFB) on November 19, 2020, for student background check, drug testing, and immunization tracking services. Amendment 1 was issued on December 2, 2020. An Intent to Award to Viewpoint, LLC dba Viewpoint Screening (VPS) was posted on December 10, 2020. CBI filed an Intent to Protest on December 11, 2020 followed by its formal protest on December 23, 2020.

ANALYSIS

CBI first alleges that the price submitted by VPS for the student background checks does not include all the searches required by the solicitation.

CastleBranch has reviewed the pricing submitted by the awarded vendor, Viewpoint Screening and, upon inspection, detected several discrepancies which may be of some concern to the State. We believe Viewpoint Screening may not be providing the State with a background check package or an immunization tracking package that meets the standards outlined in the solicitation, which, in turn, may expose the State to significant unanticipated risks and costs.

Within the solicitation, the State required background check packages to include a federal, state and county criminal record searches, among other requirements. Viewpoint Screening priced this package at \$30.00. However, to run a South Carolina statewide search, which will pull records from all South Carolina counties and will report records not available in a national search, all Consumer Reporting Agencies (CRAs) are required to go through the South Carolina Law Enforcement Division SLED CATCH (SLED) system. In order to access the SLED system all consumer reporting agencies are required to pay the non-negotiable statewide fee of \$25.00. More information regarding the SLED search, including the fee may be found here: <https://catch.sled.sc.gov/>. If Viewpoint Screening is, in fact, running the requested statewide search, it follows that they are charging the State \$5.00 for the remaining products requested, and providing the statewide search at cost. We find this to be unlikely....

This would violate the terms of the solicitation, as you indicated in Amendment One question and answer 37 and 38, that a flat rate, inclusive of all fees, must be submitted for background checks.

The solicitation required the following records be included in each check:

A. BACKGROUND CHECK

To furnish student's personal identifier record (SSN), criminal records and other background information (consumer report) to Midlands Technical College in an expeditious manner. Background check must include the following:

1. County Criminal Records
2. Statewide Criminal Records
3. Federal Criminal Record
4. Nationwide Criminal Database
5. Sexual Offender Registry
6. Residence History Search
7. Social Security Validation
8. US Patriot Act/OFAC Search
9. Fraud Abuse and Control Info System (FACIS)
10. DHHS Office of Inspector General (OIG)
11. General Services Administration (GSA)

[Solicitation, Page 13]

Amendment 1 included the following questions and responses:

Question 37

Is pricing for the background check to be a flat fee?

Yes

Question 38

Can there be a base price + applicable fees?

No

[Amendment 1. Page 5]

VPS included the following explanation of its statewide criminal records search:

The Statewide Criminal Records search directly accesses a state's criminal records repository. The Statewide Criminal Records search covers most counties in a state and will provide felony and misdemeanor conviction information going back at least 7 years.

[VPS Bid, Page 3]

VPS bid \$30.00 for each student background check. (VPS Bid, Page 12)

In response to this protest, MTC asked all bidders to verify that their bid price included all required searches. VPS advised that its price did not include the required statewide criminal records check and submitted an amended bid price of \$50.00 per student background check.

(Attachment 2) VPS's bid did not include the price for all the required searches and is not responsive to the requirements of the solicitation. The Code and Regulations prohibit the correction of a bid after bid opening unless the error is obvious. Section 11-35-1520(6) requires that bids be accepted unconditionally without alteration or correction.

Bid Acceptance and Bid Evaluation. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.

Regulation 19-445.2085(B) limits the correction of a bid after opening unless the error is clearly evident from examining the bid document:

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

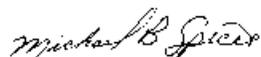
The failure to include pricing for the statewide criminal records search is not clearly evident and VPS is prohibited from amending its bid price.

American Databank, LLC, (ADB) the second low priced bidder also advised that its bid price did not include the required statewide criminal records check and submitted an amended bid price. This bid is also not responsive to the requirements of the solicitation and cannot be amended.

DECISION

For the reasons stated above, the protest by Castle Branch, Inc. is granted. The award to Viewpoint, LLC dba Viewpoint Screening is cancelled. This procurement is remanded to Midlands Technical College for award in accordance with the Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Michael Palombo](#)
To: [itmo_protest](#)
Cc: dreschem@midlandstech.edu; [Stephanie Carter](#); [Bryan Isenhart](#)
Subject: [External] Protest of Award: STUDENT BACKGROUND CHECK, DRUG TESTING Solicitation Number: 5400020587
Date: Wednesday, December 23, 2020 10:46:08 AM
Attachments: [Castlebranch.Protest.Attachments.zip](#)

Good morning:

Castle Branch, Inc., wishes to thank you for considering our response to solicitation 5400020587 for student background check, drug testing, and immunization tracking. While we regret we were not your chosen vendor, we thank you for the opportunity and hope to continue working with you in the near future.

CastleBranch has reviewed the pricing submitted by the awarded vendor, Viewpoint Screening and, upon inspection, detected several discrepancies which may be of some concern to the State. We believe Viewpoint Screening may not be providing the State with a background check package or an immunization tracking package that meets the standards outlined in the solicitation, which, in turn, may expose the State to significant unanticipated risks and costs.

Within the solicitation, the State required background check packages to include a federal, state and county criminal record searches, among other requirements. Viewpoint Screening priced this package at \$30.00. However, to run a South Carolina statewide search, which will pull records from all South Carolina counties and will report records not available in a national search, all Consumer Reporting Agencies (CRAs) are required to go through the South Carolina Law Enforcement Division SLED CATCH (SLED) system. In order to access the SLED system all consumer reporting agencies are required to pay the non-negotiable statewide fee of \$25.00. More information regarding the SLED search, including the fee may be found here: <https://catch.sled.sc.gov/>. If Viewpoint Screening is, in fact, running the requested statewide search, it follows that they are charging the State \$5.00 for the remaining products requested, and providing the statewide search at cost. We find this to be unlikely.

Instead, we believe Viewpoint Screening may only be running a nationwide database source (similar to the NRI with Sex Offender Registry) and Residency History, and may be failing to include a SLED search, as you requested, and as is required for placement of students in hospital programs in the state of South Carolina. This would reduce their cost considerably (for example, our standard price for a Residency History and NRI with Sex Offender package is only \$7.00). However, due to the nature of database searches, the State would not receive the most accurate and up-to-date results available, nor would this type of search include all records from every South Carolina county. The most up-to-date and accurate results from all South Carolina counties can only be uncovered when running a SLED search in conjunction with a database search. Since having the most accurate and up-to-date records are crucial - especially for a package to be used in hospital placement, this practice is one CastleBranch strongly discourages. In fact, due to our experience working with colleges and universities in the State of South Carolina to place students in hospital program, including our work with Midlands Technical College's nursing program, we know that providing a SLED search directly to the hospital is required for placement. If Viewpoint Screening is not running a SLED search in their \$30.00 quote, then an additional SLED search would be required before a student is accepted into a placement opportunity. This would violate the terms of the solicitation, as you indicated in Amendment One question and answer 37 and 38, that a flat rate, inclusive of all fees, must be submitted for background checks.

Additionally, within the solicitation the State asked for bidders to submit pricing for an

Immunization Tracking Package. The quoted price from Viewpoint Screening was \$15.00. It appears from the pricing submitted by Viewpoint Screening, and from our years of experience with this type of service, that this \$15.00 charge will be charged per student user per year, making the total cost over two years \$30.00. Our fee quoted for the same service was \$27.50, but our quoted fee is all-inclusive over the life of the student's use of the service, which the student may continue to access indefinitely at no charge after their program participation concludes. To follow the example above, the price at year one would be \$27.50 and no other charges would be necessary in year two, creating a savings at year two of service over Viewpoint Screening's price.

To support the assertions we have made in this protest, we have attached with this email, in a compressed folder, a copy of the solicitation, the referenced Amendment One, a screenshot of the pricing for Viewpoint Screening, and a copy of our solicitation response that includes our pricing on page 34 of 88. A web address for the SLED service is referenced in paragraph three (3), above.

The State has been a valued partner of CastleBranch's, and we wish to ensure you continue to receive the best, most trustworthy screening services available. Based on the pricing provided by the selected vendor, Viewpoint Screening, we fear this is no longer the case. As such, we would request that the State reevaluate the solicitation responses, and clarify these pricing concerns with Viewpoint Screening. Should the concerns we raise be valid, we request that the award be overturned and given to the next highest scoring bidder.

Thank you kindly for your attention. If you have any questions or concerns, or if you would like any additional materials to assist your consideration of our request, please don't hesitate to contact me.

Michael E. Palombo, J.D.

Contracts Counsel

CastleBranch

1844 Sir Tyler Drive • Wilmington, NC 28405

P: 910.815.3880 x7851



Confidentiality Notice: This email message, including any attachments, may contain private, confidential and privileged information for the restricted use of intended recipient(s). If you are not the intended recipient(s), you may NOT use, disclose, copy or disseminate this information. Please notify the sender by return email of this misdirected

correspondence and destroy all copies of the original message including all attachments. Your cooperation is appreciated.

From: "Michael Palombo" <mepalom@castlebranch.com>
To: "protest-itmo" <protest-itmo@itmo.sc.gov>
Cc: "Stephanie Carter" <smcarte@castlebranch.com>, "kleaton" <kleaton@castlebranch.com>, "drescherr" <drescherr@midlandstech.edu>
Sent: Friday, December 11, 2020 4:39:24 PM
Subject: Notice of Intent to Protest: STUDENT BACKGROUND CHECK, DRUG TESTING Solicitation Number: 5400020587

Good afternoon,

Please accept this as Castle Branch, Inc's Notice of Intent to Protest the award of STUDENT BACKGROUND CHECK, DRUG TESTING Solicitation Number: [5400020587](#).

The award was extended to Viewpoint Screening. The protest will be based on the stated price of the Background Checks quoted by Viewpoint Screening. We will be seeking a reevaluation and overturning of the award recipient because the stated fee by Viewpoint Services of \$30.00 does not include the South Carolina Statewide Criminal Search (SLED) fee of \$25.00, and this must have been included in the quote by Viewpoint Screening per the terms of the Solicitation's all inclusive flat-fee requirements (Amendment One, Question and Answer 37 & 38). It appears Viewpoint Screening's stated fee of \$30.00 is their internal background check fee and that the SLED fee would be an additional \$25.00, bringing their total price to \$55.00. Our stated cost, including the SLED fee, was \$53.00. If this is found to be the case, we would ask that the award be reevaluated and overturned.

The award was made on December 10, 2020. Please expect our formal protest and accompanying documentation on or before December 23, 2020.

Thank you,

Michael E. Palombo, J.D.

Contracts Counsel

CastleBranch

1844 Sir Tyler Drive • Wilmington, NC 28405

P: 910.815.3880 x7851

Attachment 2

From: [Latitia V. Trezevant](mailto:Latitia.V.Trezevant)
To: [Robert Keller](mailto:Robert.Keller)
Subject: FW: Notice of Intent to Protest: STUDENT BACKGROUND CHECK, DRUG TESTING Solicitation Number: 5400020587
Attachments: [image001.png](#)
[image002.png](#)

Hi Rob,
Thank you for response. We will be back in contact soon.
Again, thanks.
Latitia

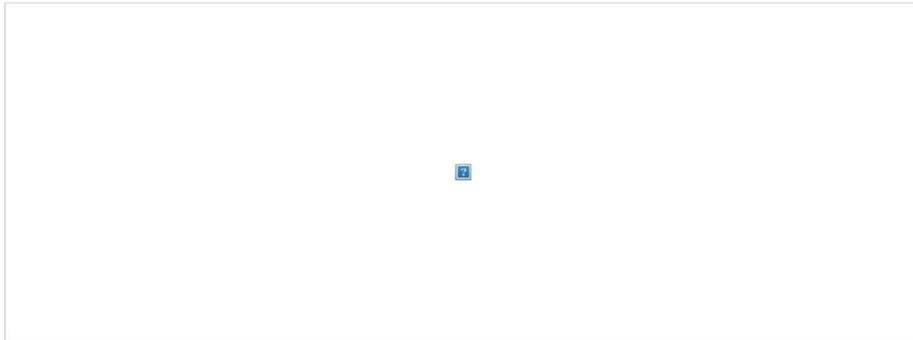
From: Robert Keller <rob@viewpointscreening.com>
Sent: Wednesday, January 6, 2021 11:13 AM
To: Latitia V. Trezevant <trezevantl@midlandstech.edu>
Subject: Re: Notice of Intent to Protest: STUDENT BACKGROUND CHECK, DRUG TESTING Solicitation Number: 5400020587

[ATTENTION: This email was sent from an external source. Open attachments and links with caution.]

Good Morning Ms. Trezevant,

In response to your request for the contested pricing I have attached our formal contested pricing and I have put it in this email below to reflect the pricing with the SLED check for the statewide bullet point

Cost for package with SLED - \$50.00



Robert Keller
Vice President of Sales
Viewpoint Screening
888-974-8111 x 75
viewpointscreening.com
On 1/5/2021 8:00 AM, Latitia V. Trezevant wrote:
Good morning Robert,

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2019)

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: <http://procurement.sc.gov>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. *[The Request for Filing Fee Waiver form is attached to this Decision.]* If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1205 Pendleton Street, Suite 367, Columbia, SC 29201**

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.