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Protest Decision

Matter of: Viewpoint, LLC dba Viewpoint Screening

Case No.: 2021-130

Posting Date: March 1, 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 may not be able to perform the contract is dismissed. The protest letter of Viewpoint, LLC dba Viewpoint Screening (VP) 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 to Viewpoint, LLC Posted	12/10/2020
Intent to Protest by Castle Branch, Inc. Received	12/11/2020
Protest Received	12/23/2020
CPO Decision Posted	01/20/2021
Intent to Award to Wolfe, Inc. Posted	02/11/2021
Intent to Protest by Viewpoint, LLC Received	02/11/2021
Protest Received	02/23/2021

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. Castle Branch, Inc. (CBI) filed an Intent to Protest on December 11, 2020, followed by its formal protest on December 23, 2020, alleging that VS's bid was nonresponsive for failing to include a required background check related pricing. The CPO posted a decision granting CBI's protest and cancelling the award to VS on January 20, 2021. (CPO Case 2021-123) Subsequently, MTC posted an Intent to Award to Wolfe, Inc, on February 11, 2021. VP filed a notice of intent to protest on the same day and followed with its formal protest on February 23, 2021.

ANALYSIS

VS letter of protest initially challenges information presented by CBI in the previous protest and offering to amend its bid by including the required background check at no charge. As stated in the previous decision, the Code requires that bids be accepted unconditionally and without alteration. To allow a bidder to correct its bid after the bids are opened and competing prices announced would provide that bidder an unfair competitive advantage and is prohibited by the Code.

VS then protests that Wolfe *may* not be able to perform certain aspects of the contract as follows:

The solicitation also included several requirements that may not be met by Wolfe Inc.

The solicitation specifically states, “Each student’s uploaded document is to be reviewed, and either approved, denied, or marked as incomplete within 24 hours of submission.” This is a guarantee that is only made by Viewpoint Screening, and this turnaround time is yet to be seen by other companies.

“In addition to phone and email service, service will include instant messaging (Live Chat) for students to have immediate contact with Student Service Representative with questions or problems.” Each page within viewpointscreening.com includes an instant messaging option. This feature has not been found on wolfeinc.com.

“Contractor will create and design a custom webpage for students, free of charge to include: school’s colors, college logos and additional information of school’s choice, e.g. drug testing locations, release forms.” This is a standard procedure at Viewpoint Screening. We have been unable to find the same feature from Wolfe Inc.

Section 11-35-1810 of the Code requires the procurement officer to determine if a bidder or offeror is Responsible², that it has the wherewithal to perform fully the requirements of a contract, prior to posting an award.

Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.

The procurement officer determined that Wolfe is a responsible bidder. Section 11-35-2410 provides that this determination is final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law. VS does not challenge the determination of responsibility. VS speculates, but provides no evidence, that Wolfe may not perform these certain aspects of the contract. The South Carolina Procurement Review Panel addressed a similar challenge to a bidder’s responsibility in *In Re: Appeal by Catamaran, LLC*, Panel Case 2015-2:

² A responsible bidder is defined in Section 11-35-1410(8):

‘Responsible bidder or offeror’ means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

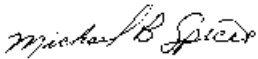
Catamaran's claim regarding ESI's responsibility is based upon speculation and conjecture that ESI will not be able to fully perform the contract because of its pricing proposal. The Panel finds such a claim is a matter of contract administration and does not state a proper challenge to responsibility. See, e.g., ASC Mediacar Service, Inc., B-213724 (Comp.Gen.), 84-1 CPD P 45, 1983 WL 27814 (1983); Kitco, Inc., B-221386 (Comp. Gen.), 86-1 CPD P 321, 1986 WL 63328 (1986). Moreover, Catamaran does not allege any facts tending to show that PEBA's responsibility determination lacked a reasonable or rational basis. Therefore, the Panel finds has failed to state a claim upon which relief can be granted and hereby dismisses the portion of Catamaran's protest alleging that ESI is not a responsible offeror. 12

This issue of protest is dismissed.

DECISION

For the reasons stated above, the protest by Viewpoint, LLC dba Viewpoint Screening is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Josh Kneeland](#)
To: [itmo_protest](#)
Cc: dreschem@midlandstech.edu
Subject: [External] Protest of Award: STUDENT BACKGROUND CHECK, DRUG TESTING AND IMMUNIZATION, TRACKING SYSTEM Solicitation Number: 5400020587
Date: Tuesday, February 23, 2021 5:01:34 PM
Attachments: [Josh Signature.png](#)
[Viewpoint Screening - Midlands Technical College Proposal FINAL.pdf](#)
[2021-123.pdf](#)

Mr. Spicer,

This award was originally extended to Viewpoint Screening on December 9th, 2020. On December 10th, that award was protested by Castle Branch, Inc. After reviewing the protest made by Castle Branch, we feel it is imperative to respond and protest the current award made to Wolfe Inc. The protest made by Castle Branch includes several misleading comments, incorrect statements, and untrue explanations regarding Viewpoint Screening, and our services.

The first topic they bring up is the South Carolina statewide search known as SLED. The SLED search is a widely used source for criminal information within the state of South Carolina. Please be aware that the SLED search option is not mentioned within the solicitation provided by the State of South Carolina. The term "statewide criminal records" is mentioned as a required item of the requested background check. There are other sources available for South Carolina criminal records at the statewide level. Since the solicitation did not request SLED by name, it is not justifiable to cancel the award provided to Viewpoint Screening based on a misunderstanding and incorrect data provided from a third party.

Castle Branch goes on to mention that "all Consumer Reporting Agencies (CRAs) are required to go through the South Carolina Law Enforcement Division SLED CATCH (SLED) system." This is an untrue statement, and is unclear why they would make such a claim.

It is then suggested that Viewpoint Screening would rely on a database system to provide South Carolina statewide criminal information. This is also an untrue statement. Viewpoint Screening typically obtains South Carolina criminal records on a statewide level through a third party vendor. That vendor has worked with the State of South Carolina to organize an online system that pulls criminal information from all 46 counties through publicindex.sccourts.org system. If requested, Viewpoint Screening provides the search using the SLED system.

Castle Branch continues their inaccuracies regarding our immunization tracking. Viewpoint Screening submitted a cost of \$15 per student for this service. As mentioned in our proposal, this is a one-time fee and students are provided access to their account and data for their lifetime. Castle Branch attempts to manipulate our pricing by claiming students would actually be charged \$30. We feel that this was another last-ditch effort to undermine the review process by the CPO and the State of South Carolina.

Once the award to Viewpoint Screening was cancelled by the CPO, we were informed by procurement staff at Midlands Technical College that they would then extend the award to the bidder with the lowest price. The procurement staff asked for a separate cost from Viewpoint Screening to include SLED, and that cost was then provided on January 5th. It was stated by the CPO within the Protest Decision, that the Code and Regulations prohibit the correction of a bid after bid opening. Due to this, we informed procurement at Midlands Technical College that Viewpoint Screening would honor the original pricing provided within the proposal and include the SLED search at no additional cost. On February 11th, the Intent to Award was presented to Wolfe Inc. with an annual cost of \$59,400. This is significantly higher than the

annual cost of \$51,000 that was presented by Viewpoint Screening. It is puzzling to understand why the lowest price was not awarded based on the information provided to Viewpoint Screening by the procurement staff at Midlands Technical College.

The solicitation also included several requirements that may not be met by Wolfe Inc.

The solicitation specifically states, "Each student's uploaded document is to be reviewed, and either approved, denied, or marked as incomplete within 24 hours of submission." This is a guarantee that is only made by Viewpoint Screening, and this turnaround time is yet to be seen by other companies.

"In addition to phone and email service, service will include instant messaging (Live Chat) for students to have immediate contact with Student Service Representative with questions or problems." Each page within viewpointscreening.com includes an instant messaging option. This feature has not been found on wolfeinc.com.

"Contractor will create and design a custom webpage for students, free of charge to include: school's colors, college logos and additional information of school's choice, e.g. drug testing locations, release forms." This is a standard procedure at Viewpoint Screening. We have been unable to find the same feature from Wolfe Inc.

We submit this protest with attachments of our original proposal and the protest decision, which includes the protest from Castle Branch, Inc. At this time, Viewpoint Screening requests that the State reevaluate the cancellation of our award, the offer of award to Wolfe Inc., and to allow the School of Health Care at Midlands Technical College to establish an account with the vendor of their choice.

I personally thank you for your attention to this situation. Please let me know if you need any additional information.

--

 **Josh Kneeland**
President
888-974-8111 x 82
viewpointscreening.com

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised May 2020)

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 2020 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.