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Protest Decision

Matter of: Mobile Health Management Services, Inc.

Case No.: 2021-150

Posting Date: July 6, 2021

Contracting Entity: SC Department of Health and Environmental Control

Solicitation No.: 5400021476

Description: Turnkey Mobile COVID Vaccination Service

DIGEST

Protest of responsibility determination is dismissed as not ripe. The protest letter of Mobile Health Management Services (MH) 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.

BACKGROUND

Solicitation Issued:	05/24/2021
Amendment 1 Issued	06/10/2021

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

Award Posting Notice Issued	06/30/2021
Protest Received	07/01/2021

The SC Department of Health and Environmental Control (DHEC) issued this Emergency Request for Proposals (RFP) on May 24, 2021, for turnkey mobile COVID vaccination services. Amendment 1 was issued on June 10, 2021. Bids were opened on June 24, 2021. An Award Posting Notice was published on June 30, 2021 extending the date for posting the award until July 9, 2021. MH filed a protest on July 1, 2021 alleging that technical issues prevented it from submitting a bid.

ANALYSIS

Section 11-35-4210(1)(a) grants the CPO the authority to resolve a protest by prospective bidders protesting a solicitation or amendment to the solicitation within 15 days of the posting of the relevant document:

A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with a solicitation shall protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date of issuance of the Invitation For Bids Request for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Requests for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

Section 11-35-4210(1)(b) grants the CPO the authority to resolve a protest by actual bidders protesting the award of a contract within seven days of the posting of an award or intent to award:

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing of its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code; except that a matter that could have

been raised pursuant to subitem (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

Amendment 1 was posted on June 10, 2021. The last day to file a protest was May 19, 2021. MH's protest was not received until June 25, 2021. An award has not been posted as of this date, so the window for filing a protest of the award has not opened.² MH is not protesting the solicitation or amendment and the time for protesting the award has not come.

DECISION

For the reasons stated above, the protest by Mobile Health Management Services, Inc. is dismissed as not ripe.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

² Even if MH's protest were ripe, its protest would still most likely fail. Special Standards of Responsibility are mandatory requirements as defined in Regulation 19-445.2125(F):

When it is necessary for a particular acquisition or class of acquisitions, the procurement officer may develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors. A valid special standard of responsibility must be specific, objective and mandatory.

(emphasis added)

Attachment 1

From: Andrew Shulman
To: Protest-MMO
Subject: [External] RFP 5400021476 - Turnkey Mobile COVID Vaccination Service
Date: Thursday, July 1, 2021 4:48:33 PM
Attachments: [image001.png](#)
[image002.png](#)
Re Follow Up to RFP 5400021476 - Turnkey Mobile COVID Vaccination Service.msg
Re CDC COVID-19 Vaccination Program - Organization APPROVED.msg

Good afternoon, Chief Procurement Officer.

I'm writing to protest our offer being excluded for RFP 5400021476 - Turnkey Mobile COVID Vaccination Service. We were just notified of our disqualification today by the Procurement Officer, Rebecca Nichols.

For your reference, I have attached email correspondences.

The reason cited for our disqualification was our failure to enroll as a South Carolina COVID vaccinator **prior to June 24th and 2:30pm EDT**. We contend that the requirement for **prior enrollment** was not explicitly stated in the RFP.

Upon receipt of the email from Ms Nichols on 6/30 stating that we should have been enrolled prior to submitting the bid, we immediately completed the process and were approved by the State. This took less than 24 hours.

If one were to look at a very similar RFP in the state of New Jersey, you can see how clear the language is (see below).

3.1.2 REQUIRED AGREEMENTS & TRAININGS

The awarded Contractor(s) shall complete and submit the following applications, agreements, and trainings within two (2) calendar days after Contract award.

- A. CDC Provider Agreement Application located at: <https://njiis.nj.gov/core/web/index.html#/newFacilityEnrollment>;
- B. On-demand COVID-19 provider training for NJIIS located at: <https://register.gotowebinar.com/register/1852127748320554508>;
- C. CDC COVID-19 vaccine training modules located at: <https://www2.cdc.gov/vaccines/ed/covid19/index.asp>; and
- D. Privacy & Security Requirements For New Jersey Covid-19 Point of Dispensing Sites and New Jersey Vaccine Scheduling System Access Confidentiality Agreement for access to the New Jersey Vaccine Scheduling System (NJVSS), herein attached as Attachment #1.

The Contractor(s) must obtain a New Jersey CDC Provider Agreement specifically approved for operation under this Contract. Additionally, the awarded Contractor(s) shall not commence services until all agreements have been approved and training completion is confirmed.

Note: The New Jersey COVID-19 Vaccine Provider Checklist can be found at: https://www.state.nj.us/health/cd/documents/topics/NCOV/COVID19_provider_checklist.pdf.

We are not asking the State to make any accommodation for us. We simply ask the State to accept our offer, as we followed the instructions closely. We simply interpreted one requirement (a very simple one) differently than it was intended. Ms. Nichols states that we should have posed the question during the Q&A

portion of the bid process. We had never questioned the language as it just wasn't crystal clear.

Kindly advise if the State will reconsider our submission.

Warmly,
Andrew

Andrew Shulman

Chief Executive Officer
Office: 646-625-3003
Cell: 646-533-5332
ashulman@mobilehealth.net



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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.