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## Protest Decision

**Matter of:** Patriot Medical Laboratories, LLC DBA CIAN Diagnostics

**Case No.:** 2022-108

**Posting Date:** September 24, 2021

**Contracting Entity:** Department of Health and Environmental Control

**Solicitation No.:** 5400021576

**Description:** Turnkey Asymptomatic COVID-19 Testing Services for all SC Schools

### DIGEST

Protest of non-responsiveness determination is granted. The protest letter of Patriot Medical Laboratories (PML) is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (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.

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

## BACKGROUND

Solicitation Issued:	06/24/2021
Amendment 1 Issued	07/08/2021
Amendment 2 Issued	07/09/2021
Intent to Award Posted	08/26/2021
PML Intent to Protest Received	09/07/2021
PML Protest Received	09/14/2021

The South Carolina Department of Health and Environmental Control (DHEC) issued this Request for Proposals (RFP) on June 24, 2021, for asymptomatic COVID-19 testing services for all SC schools. Amendment 1 was issued on July 8, 2021 to respond to questions from potential offerors. Amendment 2 was issued on July 9, 2021 modifying the bidding schedule. An Intent to Award was posted on August 26, 2021 to four offerors. PML filed a protest on September 7, 2021 and modified its protest on September 14, 2021.

## ANALYSIS

PML protests that its proposal was improperly disqualified as non-responsive based on an authorized modification to the bidding schedule and seeks an evaluation of its proposal. PML argues that its bidding schedule modifications were authorized by the State's response to two questions in Amendment 1:

VENDOR QUESTION 43: Can we have multiple pricing tier for Antigen, pooled and standalone PCR tests?

STATE'S RESPONSE: Yes. Vendors may include line items for each testing type within the bidding schedule.

[Amendment 1, Page 10]

VENDOR QUESTION 62: Regarding the Bidding Schedule/Price-Business Proposal on pages 38-39 of the RFP: If a bidder is pricing multiple options (antigen, PCR and pooled testing) should we include individual price tables for each type of test? Please indicate your preference on how pricing should be presented for the different types of tests.

STATE'S RESPONSE: Yes, pricing for multiple options should be included for each type of test. Vendors may include line items within each bidding schedule.

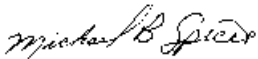
[Amendment 1, Page 14]

DHEC agrees that PML was improperly disqualified and requests the CPO grant the protest and remand the procurement back to DHEC for evaluation and award in accordance with the Code. (Attachment 2) PML's modification to the bidding schedule was allowed by the amended solicitation and, therefore, was responsive.

## **DECISION**

For the reasons stated above, the protest of Patriot Medical Laboratories, LLC DBA CIAN Diagnostics is granted, and the procurement is remanded to the Department of Health and Environmental Control for evaluation and award in accordance with the Code.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1



5330 Spectrum Drive, Suite I  
Frederick, Maryland 21703  
Ph: 844-800- CIAN (2426)  
Fax: 844-900- CIAN (2426)

BY EMAIL

September 7, 2021

Chief Procurement Officer  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201  
[PROTEST-MMO@MMO.STATE.SC.US](mailto:PROTEST-MMO@MMO.STATE.SC.US)

Re: protest of solicitation no. 5400021576, Turnkey Asymptomatic COVID-19 Testing Services for All Schools (the "RFP")

Ladies and Gentlemen,

Patriot Medical Laboratories, LLC d/b/a CIAN Diagnostics ("CIAN") hereby protests the award announced in the above-referenced RFP.

The key facts are as follows:

CIAN filed its response to the Solicitation electronically on July 22, 2021 at 8:57:20 Eastern. A copy of the confirmation of CIAN's submittal is attached hereto as Exhibit A.

CIAN's actual response to the RFP is attached hereto as Exhibit B.

After CIAN received notice of the award of the RFP to four other parties, CIAN submitted a FOIA request to the Freedom of Information Office, SC Department of Health & Environmental Control Office regarding certain documentation relevant to this RFP. We received on September 7<sup>th</sup> (today) the scoring sheet for this RFP in response to the FOIA request. The scoring sheet is attached hereto as Exhibit C.

CIAN does not appear on the scoring sheet. Thus, it appears that our duly filed response to the RFP was either lost or not considered for reasons unknown. In either event, the failure to evaluate CIAN's bid would seem to violate the South Carolina procurement regulations which provide in part:

*"Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board."* S.C. Code Section 11-35-1520(6) (emphasis added).

In this case, CIAN's bid was not evaluated at all notwithstanding its timely submittal.

As fair and just relief from this violation of the procurement laws, CIAN simply seeks an evaluation of its response to the RFP by the appropriate officials of South Carolina and its score fairly considered before any contract is executed in furtherance of the RFP.



5330 Spectrum Drive, Suite I  
Frederick, Maryland 21703  
Ph: 844-800- CIAN (2426)  
Fax: 844-900- CIAN (2426)

Thank you.

Very truly yours,

Ross E. Eichberg  
General Counsel  
301-873-1891  
[Ross.eichberg@ciandx.com](mailto:Ross.eichberg@ciandx.com)

## Attachment 2



September 20, 2021

Mike Spicer  
Chief Procurement Officer  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, S.C. 29201

Re: Protest of Award of Request for Proposal 5400021576 (Solicitation)

Dear Mr. Spicer:

I am providing a response to the protest of CIAN Diagnostics to the above referenced Award.

The Request for Proposal 5400021576 was published on June 24, 2021. A total of 35 vendors submitted proposals. Bids were opened on July 22, 2021. Following evaluation and scoring, Award was made to the four highest ranked offerors and an Intent to Award was posted on August 26, 2021.

Upon reviewing the bids prior to evaluation, the proposal received from CIAN Diagnostics was determined to be non-responsive because the bidding schedule was altered to add eight additional lines, two lines to each of the four lots in the bid schedule. This resulted in a submitted bid schedule from CIAN Diagnostics with 16 line items rather than the eight that were provided in the revised bid schedule that was included with Amendment 2, dated July 9. This action conflicted with the required State of S.C. standard clause, "Submitting a paper offer or modification (Mar 2015)" found on page 16 of the solicitation. This clause states, in part, "Do not modify the solicitation document itself (including bid schedule)." This was the foundation for the non-responsive determination.

In his September 14, 2021 letter amending and supplementing their original protest letter, Mr. Eichberg of CIAN Diagnostics points to two answers to vendor questions (questions 43 and 62) that DHEC provided as a part of Amendment 1 to the solicitation which appear to provide allowance for alteration of the bidding schedule to provide pricing for additional testing options. Mr. Eichberg also correctly points out that terms in the amendment take precedence over terms in the earlier solicitation document.


While it was DHEC's intention that the revised bid schedule in Amendment 2, which increased the line items from the original 4 to a new total of 8, was to be used without alteration, we concede to Mr. Eichberg's point that the answers to questions 43 and 62 did unintentionally create an allowance where the alteration of the bid schedule by CIAN Diagnostics would be responsive and should not have been rejected.

S.C. Department of Health and Environmental Control

2600 Bull Street, Columbia, SC 29201 (803) 898-3432 [www.scdhec.gov](http://www.scdhec.gov)

We recommend that the Chief Procurement Officer (CPO) grant the relief sought by CIAN Diagnostics and uphold the Protest and remand it back to DHEC for evaluation and scoring and that, if after evaluation and scoring CIAN Diagnostics is one of the highest ranked offerors, that the Awards under this solicitation be revised accordingly.

Sincerely,



Tripp Clark  
Procurement Director  
SCDHEC

cc: Ross E. Eichberg, General Counsel , CIAN Diagnostics  
Sam Mullapudi, CIAN Diagnostics  
Lisa Roland, DHEC Procurement Manager  
John Harleston, DHEC Office of General Counsel

## 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.

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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**

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\_\_\_\_\_  
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: \_\_\_\_\_

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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.**