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EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

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DIVISION DIRECTOR
(803) 734-8018

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

Protest Decision

Matter of: Mako Medical Laboratories, LLC

Case No.: 2022-115

Posting Date: November 9, 2021

Contracting Entity: Department of Health and Environmental Control

Solicitation No.: 5400021811

Description: Turnkey Covid-19 Testing Services

DIGEST

Protests is dismissed as untimely. The protest letter of Mako Medical Laboratories (MML) is included by reference. (Attachments 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:	08/05/2021
Amendment 1 Issued	08/19/2021
Intent to Award Posted	10/21/2021
MML Protest Received	11/02/2021

The South Carolina Department of Health and Environmental Control (DHEC) issued this Request for Proposals (RFP) on August 5, 2021, for Turnkey Covid-19 Testing Services. Amendment 1 was issued on August 19, 2021. Intent to Award was posted on October 21, 2021 to Genetworx, Impact Health, LTS, Rapid Reliable Testing, and St. Jude Laboratories. MML sent a letter of protest to the procurement officer at 6:38 AM on November 2, 2021. (Attachment 2) DHEC forwarded the protest to the CPO at 10:02 AM on November 2, 2021. (Attachment 3)

ANALYSIS

Section 11-35-4210(1)(b) grants an actual bidder the right to protest the 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.

(emphasis added)

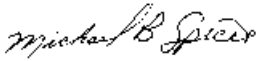
The Intent to Award was posted on October 21, 2021. The seventh business day was November 1, 2021. MML's letter of protest was not received until November 2, 2021. The Procurement Review Panel has consistently held that the time limit for filing set by the statute is jurisdictional and cannot be extended. *In re: Protest by First Sun EAP Alliance, Inc.*, Panel Case No. 1994-11.

Even if MML's protest were timely, it only requests reconsideration; it does not allege any violation of the Code or Regulations upon which a protest could be granted.

DECISION

For the reasons stated above the protest of Mako Medical Laboratories is dismissed as untimely.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1



8461 Garvey Drive, Raleigh, NC 27616 | Phone: 844-MAKOLAB

To whom it may concern,

We would like to start by showing our gratitude and support for all the work each department throughout SC DHEC has done thus far to keep South Carolina safe during these past two years. We have worked as a COVID-19 Rapid Response and static testing site partner for SC DHEC for a little over a year and have witnessed firsthand the dedication employees across the state have for their communities. To each employee we have had the pleasure of working with, we say Thank You.

I would like to formally protest the award for RFP 5400021811. We received the evaluations and scoring 7 days after submitting the FOIA request, so we have had little time to digest the given information. However, from what we can see we would like a few key items discussed and will be easily listed below.

- Technical Approach- The marketing approach we took was noted "Need to look over marketing approach-monitor" by an evaluator as something to monitor. We want to elaborate that this effort is at no cost to SC DHEC and is utilized in conjunction and approval from SC DHEC. Our marketing efforts help alleviate and take a huge burden off DHEC to get the word out about testing generalities, where you can get tested, when you can get tested, etc. In our experience working with COVID command center in SC DHEC for the last 15 months this has been a huge relief to the regional leaders of DHEC. I would like it to be noted that we ask for DHEC "blessing" before we do any of our marketing efforts.
- Technical approach- We have the fastest Rapid Response efforts as we already have boots on the ground with our current SC DHEC covid testing contract. We could easily take on any community site needed within a days' notice. We have prepared and built an entire division over the past year to handle any request SC DHEC would send us.
- Qualifications and experience- We noted using a reference that we are a qualified business to do work in the state of SC. It was noted that we have worked as a testing partner for SC DHEC for past year, not only with the HBCU's but across the state at community churches, Health departments, and many more. One evaluator had an "*" next to this on the evaluation. I want to make sure that this was noted as more than ample qualifications and experience.
- Technical approach and pricing- We request that the evaluators consider the massive benefit genetic sequencing is to the state from a cost perspective and tracking of data. By Mako performing ALL genetic sequencing at NO COST to the State, we can provide valuable information to the SC epidemiology department. They then use this information to better navigate quarantine areas and can set up better parameters to keep the residents of SC safe, back to work, and back in business operation. For example, the states dashboard at this time shows a 2.9% positivity rate, hypothetically that is MAKO sequencing 3 out of every 100 hundred individuals tested daily. To have this test ran at no cost to state is saving the state department \$1,000's daily and the benefit of the results of said tests are unmatched.



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In closing, we have demonstrated for over a year that we are trusted partner with fast turn-around time, excellent HL7 connection with SCION, rapid response of same day, and unmatched benefits such as genetic sequencing. As one evaluator stated, “Strong application”, and multiple evaluators noted our genetic sequencing capabilities, we hope that you will strongly reconsider our position as a trusted vendor for this endeavor. Please look over our proposal again and match our benefits to our scoring, such as sequencing, same day response, and adaptability to any request from DHEC.

Again, I can’t thank you enough for the efforts you have put in during this uncertain time. From procurement team to command center, to boots on the ground swabbing, SC DHEC has shown what it means to put community first. Thank you for your reconsideration.

My kindest regards,

Nolan McBride
VP Operations, South Carolina
704-634-9986

Attachment 2

From: [Clark, Tripp](#)
To: [Spicer, Michael](#)
Cc: [Kerr, Amber L.](#)
Subject: [External] Fw: MAKO - Protest
Date: Tuesday, November 2, 2021 1:11:57 PM
Attachments: [MAKO RFP 5400021811 response to FOIA request 854469.docx](#)

E-mail requested is below.

Tripp Clark
Procurement Director
Bureau of Business Management
S.C. Dept. of Health & Environmental Control
Office: (803) 898-3485
Mobile: (803) 465-3636
Fax: (803) 898-3505
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



From: Nolan McBride <NMcBride@makomedical.com>
Sent: Tuesday, November 2, 2021 6:38 AM
To: Kerr, Amber L. <KERRAL@dhec.sc.gov>
Subject: MAKO

***** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email.*****

Mrs. Kerr,

Please see attached response to FOIA request #854469.

Best wishes,

Nolan McBride
Mobile: 704-634-9986
www.makomedical.com

Attachment 3

From: [Clark, Tripp](#)
To: [Protest-MMO; Spicer, Michael](#)
Cc: [Kerr, Amber L.](#)
Subject: [External] Fw: MAKO - Protest
Date: Tuesday, November 2, 2021 10:02:23 AM
Attachments: [MAKO RFP 5400021811 response to FOIA request 854469.docx](#)

Mike,

Please see below and attached a letter stating an intent to protest by Mako Laboratories. This intent letter was sent to the buyer, Amber Kerr, this morning at 6:38 AM. As best I can tell, it was not sent to the CPO via the protest email address unless it was sent as a separate email. The DHEC Intent to Award was posted on 10/21, so the 7-business day deadline for a placeholder for a protest expired at midnight on November 1. As such, I believe that this intent to protest is not correctly filed nor is it timely.

In his letter, Mr. McBride correctly points out that a FOIA request that he submitted to DHEC was fulfilled in 7 calendar days, not 5 calendar days as newly required under §11-35-410. The request was submitted to our FOIA office without reference to a potential for protest, and I do not believe that our FOIA staff was aware that the quicker fulfillment requirements of §11-35-410 applied to this request. We have discussed this requirement with our FOIA staff.

For context, MAKO labs has been and continues to be a good vendor for us and currently has a couple of Emergency awards for testing both in schools and in the community. We have no issues with their performance, they just simply were not one of the five highest scoring vendors in this solicitation.

The key documents for this solicitation can be found at <https://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400021811>

Tripp Clark
Procurement Director
Bureau of Business Management
S.C. Dept. of Health & Environmental Control
Office: (803) 898-3485
Mobile: (803) 465-3636
Fax: (803) 898-3505
Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



From: Kerr, Amber L. <KERRAL@dhec.sc.gov>
Sent: Tuesday, November 2, 2021 9:23 AM
To: Clark, Tripp <clarkhc@dhec.sc.gov>
Subject: Fw: MAKO - Protest

Please see attached Protest. Need to know if this was filed with state procurement.

Thank you!

Amber Kerr

Procurement Manager / P-Card Coordinator

SC DHEC - Bureau of Business Management

301 Gervais St, Columbia SC 29201-3073

Phone: 803-898-3484 Fax: 803-898-3505

Connect: www.scdhec.gov [Facebook](#) [Twitter](#)



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From: Nolan McBride <NMcBride@makomedical.com>

Sent: Tuesday, November 2, 2021 6:38 AM

To: Kerr, Amber L. <KERRAL@dhec.sc.gov>

Subject: MAKO

***** Caution. This is an EXTERNAL email. DO NOT open attachments or click links from unknown senders or unexpected email. *****

Mrs. Kerr,

Please see attached response to FOIA request #854469.

Best wishes,

Nolan McBride

Mobile: 704-634-9986

www.makomedical.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.