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## Protest Decision

**Matter of:** Atkins North America, Inc.

**Case No.:** 2022-139

**Posting Date:** June 23, 2022

**Contracting Entity:** Adjutant Generals Office – SC Emergency Management Division

**Solicitation No.:** 5400022956

**Description:** Disaster Recovery Contract Support

### DIGEST

Protest alleging technical difficulties with the State's procurement system prevented submission of proposal is not ripe and is dismissed. The protest letter of Atkins North America (ANA) is included by reference. (Attachments 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:	04/20/2022
Amendment 1 Issued	05/16/2022
Proposals Received	06/01/2022
Protest Received	06/16/2022

The State Fiscal Accountability Authority (SFAA) issued this Request for Proposals (RFP) on April 20, 2022, on behalf of the Adjutant Generals Office, SC Emergency Management Division for contractors to provide assistance in recovery activities from emergency or disaster incidents as required. Amendment 1 was posted on May 16, 2022, and proposals were received on June 1, 2022. ANA filed a protest on June 16, 2022.

## ANALYSIS

ANA protests that it was unable to submit its proposal because the South Carolina Enterprise Information System (SCEIS) was experiencing technical difficulties. Section 11-35-4210(1) grants potential and actual bidders two opportunities to a procurement.

- (a) 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.
- (b) 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.

The CPO is only authorized to review protests that are received within these statutory timeframes. Amendment 1 to this solicitation was posted on May 16, 2022. The time allowed by law to file a timely protest expired at midnight on May 31, 2022. An award has not yet been posted, so the time allowed by law for a protest of the award has yet to arrive. Consequently, this protest is not ripe.


Even if the time for a protest of the award were at hand, there is a proverbial catch 22 that would prevent the CPO from reviewing the merits of the protest. The CPO can only review protests from actual bidders or offerors. Since ANA was unable to submit its proposal, it cannot be an actual bidder or offeror.<sup>2</sup>

Finally, even if ANA's claim were ripe, the protest fails to state a claim upon which relief may be granted. While unfortunate, this error could have been caused by the user, by ANA's computer system, by ANA's internet provider, or by unknown causes. And even if ANA could establish that a SCEIS malfunction caused the issue, ANA still fails to state a valid protest. "[E]ven with appropriate procedures in place, an agency may lose or misplace a bid or quotation, and the occasional loss of a bid or quotation—even if through the negligence of the agency—generally does not entitle the bidder or vendor to relief." *American Material Handling, Inc.*, B-281556 (Comp. Gen. 1999) (holding government's computer malfunction in accepting bid does not sustain a protest where the loss was isolated and not part of deliberate effort to exclude vendor or the result of agency's failure to have adequate procedures in place)."

## DECISION

For the reasons stated above, the protest of Atkins North America, Inc. is not ripe and is dismissed

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

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<sup>2</sup> Although ANA alleges it emailed a copy of its bid to the procurement officer, email bids are expressly not authorized by the solicitation. (Solicitation, pp. 13-14).

## Attachment 1



Member of the SNC-Lavalin Group

Atkins North America, Inc.  
1600 RiverEdge Parkway  
NW, Suite 700  
Atlanta, GA 30328  
**Telephone:**  
770.933.0280  
**[www.atkinsglobal.com](http://www.atkinsglobal.com)**

June 16, 2022

Ginny Morgan, Chief Procurement Officer  
Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

*Submitted electronically to [protest-mmo@mmo.state.sc.us](mailto:protest-mmo@mmo.state.sc.us)*

**Re: Protest to the Disaster Recovery Contract Support | RFP No. 5400022956 | Adjutant Generals Office, South Carolina Emergency Management Division (SCEMD)**

Dear Chief Procurement Officer:

By submission of this letter Atkins North America, Inc. (Atkins) is filing protest to RFP No. 5400022956, Disaster Recovery Contract Support, Adjutant Generals Office, South Carolina Emergency Management Division (SCEMD).

**Grounds for Protest:**

In accordance with Section 11-35-4210 of South Carolina's Consolidated Procurement Code and Section 19-445 of South Carolina's procurement regulations, Atkins files this protest as we were unable to submit a response to RFP No. 5400022956 due to the inoperability of the website for submission, <http://www.procurement.sc.gov>.

This is the first time the online system has been used as the only form of submission for a SCEMD RFP. Atkins has been successful in the last two procurements for SCEMD for Disaster Recovery Contract Support and is a current contractor with more than a decade of experience working with the State. We have never had an issue with an online submission of proposals in our years of operating across multiple disciplines throughout the United States.

We have a long and excellent history in working with South Carolina and put our best team forward in preparing the response. We were well aware of the online submission, which has never been an issue with other clients. As this was a new form of submission for SCEMD, we prepared by taking the tutorial of the system twice.

Despite following all instructions and being prepared for submission, the opportunities would not load on the site. These issues began at 1:00 am on June 1, well before the deadline of 11 am Eastern. The issues continued throughout the morning as we made multiple attempts to submit. The window for the opportunities was frozen and no action could be taken. Even though, per the training, the preferred browser is Internet Explorer, we also tried Google Chrome and Microsoft Edge. Multiple Atkins users logged in to try and load to no avail.

Per the instructions and the RFP, we called the help desk line. Calls were unanswered or dropped and voicemails were not returned. Every time we called, the call was dropped, but when we were able to leave a message, it remained unanswered. When we were finally able to access and load the PDFs the window was still non-functional. We did not receive notice until June 2, 2022 that the technical response and pricing were not accepted in the system.

Our proposal was complete and ready as evidenced by the fact that it was submitted by email to the procurement officer, Faith Williams, prior to the deadline.

**Relief Requested:**

In accordance with Section 11-35-4210, subsection 3, we respectfully request an opportunity to reach a mutual agreement regarding the submission of the response. Subsection 3) states:

3) Duty and Authority to Attempt to Settle Protests. Before commencement of an administrative review as provided in subsection (4), the appropriate chief procurement officer, the head of the purchasing agency, or their designees may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The appropriate chief procurement officer has the authority to approve any settlement reached by mutual agreement.<sup>1</sup>

While the online system never worked for us despite multiple attempts all morning of June 1, 2022 and calls that were never answered by the deadline, we did submit the proposal directly via email.

We were prepared for this response, followed all instructions, but the submission did not occur in the online portal due to issues with the online system.

We respectfully request that you look into issues with the online submission, considering that no other form of submission was allowed, and correspond with SCEMD about this issue.

Our request is that the submission via email be accepted for review, or in the alternative that a discussion is held with SCEMD leadership.

Should you have any questions regarding this proposal, please feel free to contact me at 512.844.3275 or [erin.capps@atkinsglobal.com](mailto:erin.capps@atkinsglobal.com), or Margaret Walton at 803.622.4142 or [margaret.walton@atkinsglobal.com](mailto:margaret.walton@atkinsglobal.com).

Sincerely,



Erin Capps, JD  
Project Director

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<sup>1</sup> [Code of Laws - Title 11 - Chapter 35 - South Carolina Consolidated Procurement Code \(scstatehouse.gov\)](https://scstatehouse.gov/CodeofLaws/Title11/Chapter35)

## 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.**