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Protest Dismissal

Matter of: Leap Orbit LLC
File No.: 2025-206B
Posting Date: January 17, 2025
Contracting Entity: South Carolina Department of Public Health
Solicitation No.: 5400026425
Description: Prescription Monitoring Program

DIGEST

The Chief Procurement Officer (CPO) dismisses protest as moot where the CPO has cancelled the intended award of a contract per Reg. 19-445.2085(C). Leap Orbit LLC's protest is attached as Exhibit A.

BACKGROUND

On February 14, 2024, the Division of Procurement Services (DPS) issued a solicitation on behalf of the South Carolina Department of Public Health (Department) for proposals for a prescription drug monitoring system called a Prescription Monitoring Program (PM).¹ By the deadline for receipt of proposals, DPS received three proposals including one from Leap Orbit, LLC. The evaluation committee evaluated proposals and ranked the proposal submitted by Bamboo Health, Inc. (Bamboo), as the most advantageous proposal. On October 11, 2024, the

¹ The solicitation was issued on behalf of the Department of Health and Environmental Control (DHEC). The General Assembly passed legislation in 2023 splitting DHEC into two new agencies one of which is the Department of Public Health.

procurement manager posted a notice of intent to award a contract to Bamboo. On October 25, 2024, after timely filing a notice of intent to protest, Leap Orbit protested.

On January 15, 2025, the Procurement Director - Health & Other Agencies, the section within DPS conducting this procurement, submitted a request to the CPO to cancel the intended award of a contract to Bamboo pursuant to Reg. 19-445.2085(C). The basis of the request was that in evaluating proposals, the evaluation committee did not consider only the criteria identified in the solicitation as the evaluation criteria but considered additional criteria. On January 17, 2025, after reviewing this request and the procurement file, the CPO canceled the intended award of a contract to Bamboo as set forth in his decision in File 2025-206A. Therefore, the protest of Leap Orbit is moot.

DECISION

For the reason stated above, the CPO dismisses Leap Orbit's protest as moot.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2024)

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 2024 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 SubscribeITs, 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.

John E. Schmidt, III
803.348.2984
John@SchmidtCopeland.com



Melissa J. Copeland
803.309.4686
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October 24, 2024

Via Electronic Delivery to protest-mmo@mmo.sc.gov

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 601
Columbia, SC 29201

*Re: Protest of Award–Prescription Monitoring Program, SC Department of Public Health,
Solicitation #5400026425*

Dear Chief Procurement Officer:

This firm represents Leap Orbit LLC (“Leap Orbit”). Leap Orbit herewith submits this Protest of the evaluation and award in the above referenced matter. This protest is submitted to you as Chief Procurement Officer pursuant to S.C. Code Ann. § 11-35-4210, with respect to the above referenced evaluation process and the Notice of Intent to Award issued to Bamboo Health Inc. (“Bamboo”) in connection with *Prescription Monitoring Program, SC Department of Public Health, Solicitation #5400026425*. The Notice of Intent to Award was posted October 11, 2024. Leap Orbit submitted its timely Notice of Intent to Protest on October 22, 2024. This protest is timely submitted.

Leap Orbit protests the evaluation and award pursuant to S.C. Code Ann. § 11-35-4210. The grounds of this protest are set forth below. Leap Orbit reserves the right to offer facts, evidence and argument in support of the protest at any time as may be permitted by law. Leap Orbit requests due notice and a hearing at which it will present facts, evidence and argument on these issues and any others as may be properly raised under law. If for any reason a hearing will not be held, Leap Orbit requests that the CPO advise of any deadlines for the submission of evidence and argument in support of this protest.

This matter involves an RFP issued for the Department of Health for a Prescription Monitoring Program (PMP”). According to the RFP, DHEC’s Bureau of Drug Control (“BDC”) is tasked with providing a system that will improve the state’s ability to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances. The system must manage all aspects of data collection and analysis and make it available for access by authorized users.

House Bill 3803, enacted by the South Carolina Legislature on June 14, 2006, authorizes DHEC to establish and maintain a program to monitor the prescribing and dispensing of all Schedule II, III and IV controlled substances by professionals licensed to prescribe or dispense these substances in South Carolina. The purpose of this legislation is to improve the State's ability to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances. S.C. Code Ann. § 44-53-1640 requires dispensers to submit to DHEC, by electronic means, information regarding each prescription dispensed for a controlled substance.

The primary function of the PMP is to provide for a central repository for all Schedule II-IV controlled substance prescriptions dispensed in South Carolina. Authorized persons may request information from this repository to assist them in identifying and deterring drug diversion, consistent with S.C. Code Ann. § 44-53-1620. Assuring confidentiality and the security of the data is a primary consideration for this program for all aspects to include data collection, transmission of requests and dissemination of reports. *See* S.C. Code Ann. § 44-53-1650 and 1680.

Leap Orbit submitted a responsive proposal. Two other vendors proposed, including Bamboo. The RFP Evaluation was conducted in two Phases. Under Phase One, the proposals were evaluated and scored in view of two factors: "Technical Proposal" – 55 points, and "Price/Proposal" – 25 points. Phase Two involved a Demonstration which was scored on a 20 points scale. Only Bamboo and Leap Orbit were invited to the scored Demonstrations. Bamboo's proposal was scored the highest overall and was selected despite its cost being over a million dollars more than that of Leap Orbit, and despite expressed concerns about the financial health of Bamboo, which returned a "High" risk rating.

There were five evaluators. Evaluator #5 Anne Marie Ravenna and Evaluator #1 Chelsea Townsend are employees who are supervised by Evaluator #2 Lisa Thomson. In turn, Evaluator #3 Samantha Donnelly and Evaluator #4 Rosyln Hook are employees who are supervised by Evaluator #1 Chelsea Townsend. Therefore "Supervisor-Employee Evaluation Panel Affidavits" were required.

As we show below, the notes of three of the evaluators showed serious and material violations of the RFP, law and policies regarding evaluations, and their reasons for scoring contained false assertions about the vendors, which were not contained in the proposals being evaluated. Additionally, at least one of the evaluators, #3, plainly violated the rules regarding evaluation of proposals by directly comparing the proposals and demonstrations to each other, rather than comparing each vendor to the RFP standard. Indeed, that evaluator's note sheet for Bamboo's Demonstration was identical to that for Leap Orbit's demonstration, focusing primarily on findings about Leap Orbit. Because the majority of evaluators mishandled the evaluation of proposals and the demonstrations, the evaluation and award must be rejected as unlawful.

Grounds of Protest

Leap Orbit Protests the Evaluation Process and Consequent Award to Bamboo.

A. The Evaluation Process Violated Law and the RFP.

To be valid, the Panel has long held that the evaluation process must be conducted in accordance with the Procurement Code and the RFP. *See, e.g., Protest of Coastal Rapid Public Transit Authority*, Case No. 1992-16. Here, three evaluators violated the directions for evaluation by considering and scoring (false) information not contained within the vendor proposals, and by comparing the offerors directly to each other, instead of to the stated RFP requirements as the standard.

The evaluators were provided the standard Charging Packet, which states in part:

Evaluation – Your responsibility is to provide an impartial, unbiased evaluation of each and every proposal according to the evaluation criteria contained in the RFP. The evaluation panel may meet for the purpose of discussions prior to finalizing scores and making an award...

* * *
Please be objective in scoring each proposal and do not allow others, or prior knowledge, to influence you.

Charging Packet (emphasis added).

A Demonstration script was made part of the RFP, as Exhibit A.

Hence, the vendors, their proposals and Demonstrations are to be (i) evaluated each based on their content and the Demonstration script, and (ii) compared against the RFP requirements to establish a common baseline, not to be compared directly against each other. *See, e.g., Matter of Provaliant Holdings, LLC*, 2017 SC CPO LEXIS 27 (there were “no discussions among the evaluators in which proposals of different offerors were compared to other proposals”); *In re Transportation Management Services, Inc.*, 2000 SC CPO LEXIS 6 (evaluation was conducted of each proposal “against the RFP criteria and requirements and not by comparing one proposal against the others”).

The CPO has recognized that “Evaluation based on information outside the four corners of the bid is inappropriate. S.C. Code Ann. § 11-35-1520(6). *Protest of Digital Innovation*, 2018 SC CPO LEXIS 82. The CPO sustains protests when evaluations consider matters outside the proposals. *Id.*

Here, the evaluators specifically listed as reasons for their scoring certain false statements that are not contained within the proposals provided to Leap Orbit under its public records request. Some of these are set forth below. What they show is an Evaluation Panel that either did not understand its duties, or that did not abide by its duties. Either way, the evaluation is tainted.

1. Evaluator #3 Improperly Evaluated the Demonstrations, Comparing Vendors Demonstrations Directly Against Each Other, Not the RFP

First, it appears that Evaluator #3, who scored Leap Orbit lowest and identically to her supervisor Evaluator #1 (discussed below), and gave the highest possible score to Bamboo, prepared one set of comments to cover both Demonstration evaluations. The Leap Orbit Demonstration was conducted on May 22nd, one week prior to the Bamboo Demonstration on May 29.

There are no notes whatsoever from this evaluator about Leap Orbit's Demonstration from the date of about Leap Orbit's Demonstration. There are no notes from this evaluator about Leap Orbit's Demonstration as compared to the script. Instead, not until after the Bamboo Demonstration several days later, did this evaluator make notes – almost entirely *about Leap Orbit*. Those evaluation notes say almost nothing about Bamboo, and say nothing about the matters in the Demonstration script as to Bamboo. This, in of itself, is dubious. But the content of the evaluation notes that were prepared only after the Bamboo Demonstration days later are more troubling.

Remarkably, Evaluator #3's documented reasons for scoring *Bamboo's* Demonstration reads as follows:

Both Bamboo and Leap Orbit's presentations were very impressive. My major concern with Leap Orbit is that opioid antidote collection ~~is not yet~~ system has not been built. There was also little clarification, other than a promise that it could be done, on how this System would be built out. In addition to opioid antidote data being a concern I am concerned about the patient matching in ~~the~~ the interconnect system. ~~the~~ With these 2 major points, I believe that Bamboo is currently the better product to meet SC's needs.

Samantha Damely 5-29-24

Thus, the Demonstration evaluation of Bamboo is, in essence, it is “better, because it is not Leap Orbit”, and it describes only matters about Leap Orbit. The statement that both were impressive is vacuous. There is simply no evaluation of Bamboo's substantive Demonstration compared to the RFP script.

By merely making a direct comparison of the vendors, rather than a comparison to the RFP requirements, this evaluator violated the rules governing evaluations, and her evaluation is a nullity.

2. Evaluator #1 Repeatedly Generated Remarkably Detailed False Data About Leap Orbit Not in Its Proposal

In her evaluation of Leap Orbit, Evaluator #1, who also scored Leap Orbits lowest and gave Bamboo the highest possible score¹, made false, detailed negative assertions about Leap Orbit's solution and the experiences of Leap Orbit's customers, none of which were in the proposal or the procurement file. For example:

only 2 of the 4 customers have full solutions → 1 is currently rolling out and 1 only does data collection for homegrown system → both other solutions use RxCheck hub - don't currently have solution that primarily uses PMPi hub

(only 2 of the 4 customers have full solutions – 1 is currently rolling out and 1 only does data collection for homegrown system – both other solutions use RxCheck hub – don't directly have solution that primarily uses PMPi hub)

This statement is false and not indicated in Leap Orbit's proposal, which begs the question: from where did this evaluator get this detailed negative information? Getting that information (which is false) from any source other than the proposal is a clear violation of the RFP process. Moreover, in fact, all four customers of Leap Orbit were fully live as of the submission date, and all are using multiple modules of the solution (the "full" solution). Bidirectional integration with the PMPi hub is supported by Leap Orbit's solution and is enabled for any customers that wishes to use it at no additional charge to the customer. The Leap Orbit solution response to thousands of transactions from the PMPi hub in Maryland every day. Thus, the evaluator's assertions are false. Leap Orbit's proposal confirms PMPi hub connectivity:

6. System will support and maintain connections to interstate data sharing hubs. Currently available is PMPi with future potential use for RxCheck. Must be able to maintain connectivity to all states that South Carolina currently interstate data shares with (45 states plus military health system).

RxGov supports connectivity with PMPi and RxCheck out of the box. We can maintain interstate data sharing with any state or jurisdiction DHEC specifies via either hub.

In fact, Leap Orbit's proposal references its demonstrated capability to support the PMPi hub on pages 14, 15, 16, 119, 121, and 172 of its technical volume and in its proposed migration project plan on page 95 of the technical volume. Leap Orbit's proposal underscores it is agnostic with regard to integrating with the two interstate hubs, as federal agencies funding state PMP programs

¹ It is notable the Evaluator # 2, who demonstrated no scoring violations, scored Leap Orbit higher than Bamboo. Similarly Evaluator # 4 scored the two competitors very close.

have stipulated. Evaluator #1's presumptive preference for a solution that "primarily" uses PMPi hub is specious because Bamboo has an exclusive and financially opaque relationship with the National Association of Boards of Pharmacy (NABP), PMPi's nominal sponsor, to operate the PMPi hub.

Nothing in the proposal or record explains this evaluator's mis-statement of fact. Certainly not reference checks, because while the state checked Bamboo's references, it did not check Leap Orbit's references. While the state could have validated much of this information by speaking with Leap Orbit's current customers, it did not check Leap Orbit's references as it did Bamboo's.

Evaluator #1 also falsely said of Leap Orbit, with no basis whatsoever:

- platform has been operative for a year after building new platform
(platform has been operative for a year after building new platform)

This statement is false and not indicated in Leap Orbit's proposal. Further, while there were reference checks performed for Bamboo, none were performed for Leap Orbit. In fact, the Leap Orbit platform has been continuously live in production since 2017. The platform was reacquired by Leap Orbit in an asset transaction with Tyler Technologies in 2023, just as the Leap Orbit proposal states. Again, this begs the question, from where did this evaluator obtain this false information about Leap Orbit?

Evaluator #1 also stated about Leap Orbit:

- training for migration will not exceed 4 sessions of up to 25 attendees - we have more trainees
NOTE: If needed, please provide additional pages to support your explanation.
(training for migration will not exceed 4 sessions of up to 25 attendees – we have more trainees)

This finding is inaccurate and highly misleading. Leap Orbit never stated that trainings **would not exceed** four sessions, as this Evaluator asserted. In fact, what Leap Orbit stated in its proposal on this point instead was:

Training

Leap Orbit provides a methodology for training end users to leverage the features of the new solution. We have the additional value-added benefit of the director of our RxGov line of business and the proposed implementation manager, Christie Frick, be on the ground in South Carolina to assist with both initial and ongoing training of administrators and users of the system.

We will work with DHEC to develop a training plan and schedule that gives the State ample time to schedule training for staff and other classes of users, with the base assumption that it will not exceed four sessions of up to 25 attendees per session. We will utilize our RxGov team to support live sessions in South Carolina as well as web-based training. These trainings will be recorded so they may be placed on the DHEC website or otherwise reused in the future. Leap Orbit will also supply DHEC with detailed technical and administrative documentation during the transition.

In our experience, training is not a one-and-done endeavor that only occurs during implementation. Leap Orbit commits to provide ongoing training during the entire contract term to ensure that new users are trained to take full advantage of RxGov.

While Leap Orbit's proposal *includes* its "base assumption" of four in-person training sessions of up to 25 attendees per session, it is clearly not the only training offered as shown in Leap Orbit's full response, which this Evaluator completely ignored. In addition, Leap Orbit specifically offered in its proposal web-based trainings. And the proposal also clearly states that Leap Orbit will collaborate with the state on a training plan and schedule *that meets the state's needs*. The proposal also makes clear that the state would approve the Project Management Plan, which includes training. In fact, as Leap Orbit's bid is the only offer presented to the state that includes a permanent local resource to support the state's needs, including training. Taken as a whole, the Leap Orbit proposal clearly indicates that developing the training plan is a shared endeavor between Leap Orbit and the state. And it never states that the "training will not exceed" what this Evaluator mis portrayed.

The evaluation of an evaluator such as Evaluator # 1 who recites false information, information obtained outside of the process, or which draws patently incorrect conclusions from the plain language of the proposal must be rejected.

3. Evaluator #5 Referenced Positive Data About Bamboo That Was Not in the Proposal

In her evaluation of Bamboo, Evaluator #5, who gave Bamboo the highest possible score on the Technical proposal, stated:

~~patient clustering algorithms result in 99.9% pt. matching~~
(patient clustering algorithms result in 99.9% pt. matching)

But this 99.9% statistic does not appear anywhere in the Bamboo proposal supplied to Leap Orbit under its public records request. There is no basis for this evaluator to note and score this data. It is a violation of the procurement process for evaluators to use data outside the proposals.

Again, the evaluation of an evaluator such as Evaluator # 5 who recites data obtained outside of the process must be rejected.

A serious problem with this process is that it is infected by an overall failure to follow the rules of the procurement. It is known that the evaluators met in "executive session" to discuss their findings, and here, those findings included vast amounts of false information.

B. The Evaluation was Arbitrary and Capricious and Must be Rejected.

The defects shown above in this evaluation fully warrant the relief requested herein. While these process errors may have been inadvertent, they are nonetheless important to consider. The failures in this process resulted in a seriously flawed evaluation process overall. evaluator reliance on false information from outside the vendor's own proposal or the process is arbitrary and capricious. *See Appeal by Excent Corporation*, Panel Case No. 2013-2. Evaluator reliance on false information from outside the vendor's own proposal or the process is arbitrary and capricious. *Id.*

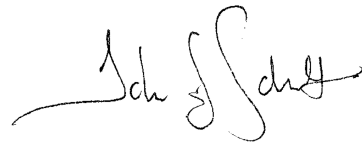
C. The Evaluation of Bamboo's Financial Capacity to Receive the Award was Arbitrary and Capricious and Must be Rejected.

Separately, the evaluation of Bamboo's financial status in the review of its responsibility was arbitrary and capricious. As the RFP states, the purpose of House Bill 380, which established the state's PMP program, is to establish and maintain "a system that will improve the state's ability to identify and stop diversion of prescription drugs *in an efficient and cost-effective manner*" (italics added). Yet the state is to pay more than **\$1.2 million dollars more** for the service of a vendor who was found by a reliable independent source to be a "High" financial risk. See Email of Don Stewart, October 3, 2024, attached ("a Dunn & Bradstreet report pulled for Bamboo Health on 9/23/2024 gave them a "High" risk rating for Overall Business Risk.") The state should not select a vendor who is a high financial risk for a large multi-year award. See S.C. Code Ann. § 11-35-1410(8); S.C. Code Ann. § 11-35-1530; S.C. Code Ann. § 11-35-1810.

III. Conclusion

For these reasons, and based on further evidence to be supplied from further records requested and testimony to be received, Leap Orbit requests a hearing, a continued stay, prompt release of all evaluation related records and emails, the entire responsibility evaluation file, and that the award to Bamboo be cancelled. Re-solicitation is the only remedy.

Very truly yours,



John E. Schmidt, III

Cc: Manton Grier, Esquire, mgrier@ogc.sc.gov

From: Stewart, Donald <dstewart@mmo.sc.gov>
Sent: Thursday, October 3, 2024 4:53 PM
To: Chelsea A. Townsend <TownseCA@dph.sc.gov>; John Harleston <harlesj@dph.sc.gov>; Lisa A. Thomson <thomsola@dph.sc.gov>
Cc: Lisa Roland <ROLANDL@dph.sc.gov>; Tripp Clark <clarck@dph.sc.gov>
Subject: RE: [External] Re: 5400026425 SCDHEC Prescription Monitoring Program - Negotiation Response

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

 Good afternoon,

I want to update everyone regarding this procurement. We received some analysis from Mary Fuhrman at DPH on Bamboo Health's financials through June 2024. See attached. This additional analysis was necessary since a [Dunn & Bradstreet report pulled for Bamboo Health on 9/23/2024](#) gave them a "High" risk rating for Overall Business Risk. It seems they had some issues in the past but the most recent financials show some improvement.

Let me know if you have questions, or if you would like to see some more information (such as the Dunn & Bradstreet report).

If you feel that we are good to go to move to the award phase, let me know and I will send a draft Intent to Award document for you to review.

Thanks,

Don

Donald O. Stewart | Procurement Manager – Agency Sourcing, Health and Human Services

Division of Procurement Services | SC State Fiscal Accountability Authority



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