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Protest Decision

Matter of: Public Consulting Group, Inc.

Case No.: 2018-211

Posting Date: April 2, 2018

Contracting Entity: South Carolina Department of Health and Human Services

Solicitation No.: 5400013926

Description: Multi-Vendor Integrator

DIGEST

Untimely protest is dismissed. Public Consulting Group's (PCG) email and letter of protest are included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer (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

Key Events

Solicitation Issued

08/08/2017

Amendment 1 Issued	09/05/2017
Amendment 2 Issued	09/21/2017
Intent to Award Posted	02/23/2018
Protest Received	03/05/2018 6:56:37 PM

ANALYSIS

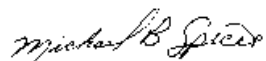
The South Carolina Department of Health and Human Services issued this Request for Proposals on August 8, 2017, for a Multi-Vendor Integrator to provide project management oversight of third party solution providers and integrate their solutions into the Medicaid Enterprise System to ensure certification by the Center for Medicare and Medicaid Services. An Intent to Award was posted to Cognosante Consulting LLC on February 23, 2018.

Section 11-35-4210(1)(b) grants any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract the right to protest to the appropriate chief procurement officer within ten days of the date award or notification of intent to award is posted. The deadline for submission of a protest of the intended award to Cognosante was the close-of-business on March 5, 2018. The close-of-business for the Information Technology Management Office is 5:00 P.M. PCG's protest was not received by the Chief Procurement Officer until 6:56 P.M. [Attachment 1] In *Protest of Palmetto Unilect, LLC*, Case No. 2004-6, the Procurement Review Panel dismissed an appeal as untimely filed because it was submitted to the CPO after 5:00 p.m. on the date of the appeal deadline. In that case, the appeal was received by the CPO by electronic mail at 5:28 p.m. on the day of the deadline.

DECISION

The protest of Public Consulting Group, Inc., was untimely filed and is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Kaplowitz, Carrie](#)
To: [itmo_protest](#)
Subject: SC Bid Protest
Date: Monday, March 05, 2018 6:56:37 PM
Attachments: [image001.png](#)
[SC Protest Letter.docx](#)

Hello,

Please find attached PCG's Bid protest response.

Thank you.



Public Focus. Proven Results.™

Carrie Kaplowitz
617-426-2026 ext. 1120 tel, 617-426-4632 fax
148 State Street Boston, MA 02109
ckaplowitz@pcgus.com



Public Focus. Proven Results.™

March 5, 2018

SENT VIA E-MAIL (protest-itmo@itmo.sc.gov)

Chief Procurement Officer
Information Technology, Management Officer
1201 Main Street
Suite 601
Columbia, SC 29201

RE: Solicitation # 54000013926 (Multi-Vendor Integrator)
Protest of Intent to Award

Dear Chief Procurement Officer:

Pursuant to South Carolina Code § 11-35-4210, Public Consulting Group, Inc. (“PCG”) submits this Protest in response to the Intent to Award the contract under Solicitation No. 5400013926 to Cognosante Consulting LLC (“Cognosante”) on the grounds that (a) PCG was prejudiced through an unjustified (and previously unknown) disqualification and (b) it is not in the State’s best interest to proceed with the intent to award under these circumstances.

In brief, the State intends to award a \$22.1 million contract to Cognosante notwithstanding that PCG is ready, willing, and able to perform these services for \$16.6 million – ***saving the State \$5.5 million.***

PCG was disqualified from the procurement for inadvertently failing to view and respond to the State’s November 2017 emailed request for clarification relating to PCG’s proposal, in which it asked how PCG would satisfy certain specifications of the RFP. However, PCG was not timely notified about the disqualification and has been unjustifiably prejudiced as a result. Rather, it learned of the disqualification only after the Intent to Award was posted: specifically, the disqualification was contained in documents provided by the State only *after* PCG submitted a public records request relating to the procurement. Had it received notice of the proposed disqualification, PCG would have explained the circumstances surrounding its delay and would have responded in full to the substantive request.

Critically, in no manner was the PCG proposal defective. And in fact, the RFP specifically states that proposals did not need to respond to each individual specification in the RFP. *See* RFP Section 4.6.1 (“SCDHHS is not requesting a requirement-by-requirement description of how

every requirement is being met.”). Moreover, the State was prohibited from contacting a bidder for clarification unless its offer “obviously conform[ed] in all material aspects to the solicitation.” See RFP Section 2.34. Ultimately, disqualification of PCG deprived the State of full and fair competition.

PCG does acknowledge that it failed to see and open the November 2017 emailed request for clarification. However, to address that oversight by disqualifying PCG violates the norms of fundamental fairness that underlie the procurement process – **and could cost the State millions of dollars**. Ultimately, the State could have exercised other means to ensure PCG responded to its communication. For example, the award notification was sent on February 23, 2017, to Info@pcgus.com, an alternative e-mail address that the State could have availed themselves. The State could have also called either of two telephone numbers listed in the proposal documents. Any of these actions would have addressed the oversight and maintained the fairness and competitiveness of the procurement.

PCG respectfully requests that the Intent to Award be cancelled and that PCG’s proposal be evaluated. Alternatively, PCG requests that the procurement be reopened and new bids be solicited.

Sincerely,

A handwritten signature in black ink, appearing to read "John Shaughnessy". The signature is fluid and cursive, with a large loop at the end.

John Shaughnessy
Practice Area Director

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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>

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 111.1 of the 2016 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.