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Protest Decision

Matter of: Therap Services LLC

File No.: 2026-217

Posting Date: August 5, 2026

Contracting Entity: State Fiscal Accountability Authority, Division of Procurement Services

Solicitation No.: 5400027650

Description: Health and Welfare Critical Incident Management

DIGEST

Protest by Therap Services LLC (Therap) granted were evaluation committee comments on the evaluation summaries for offerors displays disparate treatment of offerors. The Protest of Therap is attached as Exhibit A.

AUTHORITY

Per S.C. Code Ann. § 11-35-4210, the Chief Procurement Officer (CPO) conducted an administrative review of protests filed by Therap Recycling, Inc. (Therap), which is attached as Exhibits A. The CPO's administrative review also included a limited scope hearing, which was held on July 17. This decision is based on materials in the procurement file, testimony, and applicable law and precedents.

BACKGROUND

On December 13, 2024, the State Fiscal Accountability Authority, Division of Procurement Services (DPS) issued a solicitation for proposals to provide a solution for management and

administrative functions via a Health and Welfare Critical Incident Management (HWCIM) reporting system on behalf of the South Carolina Department of Health and Human Services (HHS).¹ [Exhibit B] The purpose of the solution is to support HHS in providing safeguards to Medicaid Home and Community-Based Services waiver participants and beneficiaries receiving services in other settings that require incident reporting and tracking. SPS subsequently issued two amendments. Amendment Number 2 issued on March 19, 2025, replaced the original solicitation and Amendment Number 1 in their entirety. [Exhibit C] Hereinafter, any reference to the solicitation is a reference to Amendment Number 2.

By the deadline for receipt of proposals, DPS received proposals from Therap, FEI.com, Inc. dba FEI Systems (FEI), and Pulselight Holdings, Inc. (Pulselight). [Exhibit D] After evaluation of proposals, the evaluation committee ranked FEI's proposal as the highest ranked proposal and Therap as second highest.² [Exhibit E] On March 9, 2026, DPS posted a notice of the State's intent to award a contract to FEI. [Exhibit F] On March 24, after timely filing a notice of intent to protest, Therap protested. On May 22, FEI responded to the protest. [Exhibit G]

DISCUSSION

The solicitation addressed the basis of award stating:

6 AWARD CRITERIA

6.1 AWARD CRITERIA -- PROPOSALS (JAN 2006)

Award will be made to the highest ranked, responsive, and responsible Offeror whose offer is determined to be the most advantageous to the State. [06-6030-1]

6.2 AWARD TO ONE OFFEROR (JAN 2006)

Award will be made to one Offeror. [06-6040-1]

6.5 EVALUATION FACTORS -- PROPOSALS (MODIFIED)

Offers will be evaluated using only the factors stated below. Once evaluation is complete, all responsive Offerors will be ranked from most advantageous to least advantageous.

¹ The original solicitation was subsequently replaced in its entirety. Therefore, the CPOC has not included the entire document as an Exhibit but rather excerpt pages to describe what HHS was looking for.

² After evaluation of all criteria except Demonstrations, Pulselight's score of 486 was mathematically too low for it to have a final score higher than FEI's even if Pulselight received the maximum possible score for demonstrations and FEI received a score of zero. Therefore, the State did not invite Pulselight to give a demonstration.

Each proposal that is, in the opinion of SCDHHS, in full compliance with the mandatory requirements of the Solicitation will be evaluated based on the following criteria.

The evaluation panel will use the information submitted in Section B, Section C, and Section D of the Offeror's Technical Proposal to evaluate the criterion listed in the table below. These sections of the Technical Proposal are defined and described beginning in Section 4.1.2 (Proposal Structure) of this Solicitation.

6.5.1 Technical Proposal Evaluation Factors

Table 6.5.1-1: Technical Evaluation Factors

Proposal Section Title	Criterion	Description	Weight
Proposed Solution and Requirements Response	Approach to Project Management	To what extent did the Offeror successfully demonstrate a willingness to participate in the SCDHHS project management and governance processes, provide the required CDML Deliverables, and generally demonstrate understanding of the effort and capabilities required to successfully implement the Health and Welfare Critical Incident Management system?	Up to 100 points
Proposed Solution and Requirements Response	Approach to Implementation	To what extent did the Offeror demonstrate an approach to confirming requirements, configuring the system, testing, and confirming functionality, and delivering a successful go-live? To what extent did the Offeror demonstrate that this approach is likely to be successful? To what extent did the Offeror address the unique circumstances of SCDHHS, SCDDSN and providers in their approach to implementation? How likely is the proposed approach to be successful given the complexity of the work required? To what extent did the Offeror propose an implementation approach that addresses the different impacted provider and Beneficiary groups? How likely is this approach to be successful given the differing familiarity and experience levels with Health and Welfare Critical Incident Management across each group? To what extent did the Offeror successfully demonstrate an understanding of the CMS certification process and willingness to participate in certification efforts including Operational Readiness Review preparation and execution, Certification Review preparation and execution, and ongoing metrics and KPI reporting in the operations phase?	Up to 200 points
Proposed Solution and Requirements Response	System Functionality	To what extent did the Offeror successfully demonstrate that the system proposed will meet the requirements of the SCDHHS and SCDDSN agencies, in a minimally burdensome way?	Up to 300 points

Proposal Section Title	Criterion	Description	Weight
		Requirements response shall be considered as part of this scoring area. Evaluators shall consider how well the system can meet requirements and to what degree configuration or customization is required to meet requirements. Evaluators may consider narrative, graphics, diagrams, or other explanatory support for the Offeror's response to the requirements to evaluate the Offeror's response.	
Organization and Staffing	Experience, Qualifications, and Staffing	To what extent does the Offeror's previous company or project experience relate to the size, scope, and complexity of the SCDHHS effort? Based on the Offeror's previous experience, how likely is the Offeror to be successful implementing the proposed system for SCDHHS and SCDSSN agencies? To what extent did the Offeror successfully demonstrate that the resources proposed have sufficient experience and qualifications to successfully perform their proposed roles? To what extent does each resource's individual experience relate to the size, scope, and complexity of the SCDHHS effort? To what extent does the Offeror's financial strength and stability demonstrate their viability to serve as a long-term partner with SCDHHS?	Up to 100 points
N/A	Demonstrations	(Criterion details and questions will be provided to Offerors upon invitation to participate in Demonstrations)	Up to 100 points
	Total Possible Technical Points		800 points

6.5.2 Price Proposal Evaluation Factors

Price scores will be calculated and awarded based on the lowest price proposal submitted. The Offerors with the lowest price proposal will receive full points. The lowest price proposal shall receive 200 points. All other Offerors will receive a percentage of the possible points determined by ratio of the Offeror's price relative to the lowest price. For example, if the lowest price proposal of the responsive responsible offeror is \$1,000, that offeror would receive 200 points for the price proposal, while the offeror whose price was \$1500 would receive 133 points ($1000/1500 \times 200$). Points for price will not be provided to the evaluation panel until after scoring has been completed.

[Exhibit C, pp. 65-67] [highlighting supplied]

The evaluation panel used a consensus evaluation process to evaluate the non-price factors. To guide the evaluation panel in the consensus evaluation process, the procurement manager provided the panel with a document titled "Consensus Scoring Process," "Phase I Consensus

Score Sheet,” and “Consensus – Score Justification.” [Exhibit H] Under the consensus evaluation process, the evaluation panel openly discusses a proposals “strengths, weaknesses, advantages, and disadvantages” relative to each evaluation criterion and arrives at a consensus of the score assigned to each criterion. The evaluation panel must support each consensus score with a scoring justification listing the pros, cons, and, if applicable, dissenting comments. The Consensus – Score Justifications for the Technical Scores is attached as Exhibit I and for Demonstration Scores as Exhibit J.

After evaluation, the selection committee assigned the following scores to Therap for the non-price criteria:

Scorecard: Therap		Scores
System Functionality	300	120
Approach to Implementation Support	200	103
Approach to Project Management	100	57
Exp/Qualification / Staffing	100	55
Demonstration-6/5 2PM	100	40
Sum	800	375

Therap’s price of \$5,849,539 was by far the lowest resulting in it receiving the maximum possible score of 200 points for price. For FEI, the selection committee assigned the following scores for the non-price criteria:

Scorecard: FEI Systems		Scores
System Functionality	300	238
Approach to Implementation Support	200	143
Approach to Project Management	100	84
Exp/Qualification / Staffing	100	73
Demonstration-6/5-10 AM	100	96
Sum	800	634

FEI’s price of \$16,277,480 was the second lowest and received a price score of 72. Therap’s total score was 575 and FEI’s 706—a difference of 131 points.

Therap broadly complains that “the evaluation and scoring of the RFP was arbitrary, capricious, biased, contradictory and incomplete as to all subjective factors of evaluation.” Therap further

complains that the implication is the evaluators simply did not read Therap's proposal³ and argues that the Consensus - Score Justifications show that the evaluation panel treated it differently from the other two offerors in the evaluation process.

Therap more specifically complains that for the System Functionality criterion, the Consensus – Score Justification for Therap states “None” for Pros despite it offering the same functionality for which other offerors received ”pros.” However, Therap's protest provides minimal specifics other than an allegation that it received no pros when FEI and Pulselight received pros for the same functionality Therap offered. Therap's protest does not identify the specific functionality that both it and its competitors offered and for which its competitors received pros but it did not. Nonetheless, the CPO finds that where evaluation comments provide scant information, this ground of protest meets the requirement to set forth one's grounds of protest “with enough particularity to give notice of the issues to be decided.”⁴ S.C. Code Ann. §11-35-4210(2). Specifically, the CPO is able to compare each functionality for which Therap's competitors received a Pro to Therap's proposal to see if the same functionality exists. There is a limitation to how far a protest that does not identify where the same functionality exist in the protestant's proposal will carry a protestant but in this case it is sufficient; however, barely.

At the hearing, Therap's attorney identified through questioning which functionality Therap claimed was the same for it and its competitors and for which its competitors received pros. For FEI, the system functionality pros identified were “Multi-Factor Authentication” and Granular audit capability.” For Pulselight, the system functionality pros identified were “Transaction

³ At the limited scope hearing, the evaluators testified that they did read all proposals. However sparse they may be, the consensus score sheet comments support this, providing comments that were clearly derived from Therap's proposal.

⁴ Before the State implemented consensus evaluation, each evaluator prepared his or her own evaluation and comments which became a part of the record. Though each individual evaluator's comments may have been sparse and sometimes cryptic, the combined comments tended to provide insight into the decision-making process. Consensus evaluation is not intended to make the decision-making process less opaque but to better enable the evaluation panel to select the solution that provides the best value for the State. In doing so, the strength and weakness comments in the evaluation sheets should be more meaningful than the equivalent of a single evaluator's comments when not using consensus evaluation.

reporting available” and “Incorporates both incident management and incident detection/data analytics.”

Although the CPO will not re-evaluate proposals or entertain allegations that one proposal is superior to others, offerors must be treated fairly and equally in the evaluation process. As the Panel has held, “[e]valuations are found to be arbitrary when offerors are not treated equally in the evaluation process.” *Appeal by CBN Secure Tech*, Panel Case 2024-4 (quoting Cbinic, Formation of Gov’t Contracts 6-163 (5th ed)). This is consistent with federal procurement law, where agencies must evaluate proposals “in an even-handed manner.” *360 IT Integrated Solutions*, B-414650.7 (Comp. Gen. May 18, 2018). “Accordingly, where an agency treats vendors unequally, it must provide a reasonable explanation for doing so.” *Id.*

In *Integrated Solutions*, the agency assigned a strength to one proposal for spreading out job functions and offering teams to perform overlapping functions to backup each other. The protester also offered to spread functions across multiple teams but was not assigned a similar strength in the evaluation. In granting the protest, the Comptroller General concluded “that the agency has failed to provide a meaningful explanation for its unequal treatment of the two vendor’s approaches.” *Id.*; see also *Thalle Const. Co., Inc. v. U.S.*, 159 Fed. Cl. 698 (2022) (finding evaluation arbitrary where proposal was given a strength for proposing the use of certain equipment that was substantially indistinguishable from the equipment proposed by an offeror whose proposal was not similarly credited with a strength).

In this case, the evaluators assigned FEI a “pro” in the System Functionality criterion for having multi-factor authentication (MFA). While Therap also proposed multi-factor authentication, it failed to receive a single “pro” in the System Functionality criterion. Although Mr. Fowler testified that there are different “flavors” of MFA and the distinction was important to him, the consensus score sheets show that FEI was simply credited for the existence of multi-factor authentication. Because Therap’s proposal also offered multi-factor authentication but was not

scored with a “pro,” it has met its burden of proving unequal treatment and an arbitrary evaluation.⁵

The evaluators also assigned FEI a “pro” in the System Functionality criterion for having a “Granular audit capability.” In its questioning of the evaluators, Therap showed where its proposal offered audit functionality, however, Mr. Fowler testified that Therap did not offer the granularity of audit functionality that FEI offered. In this case, the evaluator comments are sufficient to make a distinction between FEI and Therap.

The evaluators assigned Pulselight a “pro” in the System Functionality criterion for having “Transactional reporting available.” In two places in its proposal, Pulselight states:

The ad hoc reporting module is a feature-rich, self-service reporting platform that will empower the State to do transactional reporting on system data, to track operational performance, and conduct quality monitoring.

[Pulselight Technical Proposal pp. 124 and 181]

At the hearing, Therap pointed Mr. Fowler to the “Out-of-the-box” reporting and “Ad hoc reporting” statements in its proposal and asked Mr. Fowler whether he would agree that Therap’s proposal also included transactional reporting. Mr. Fowler testified that he could not find any mention of transactional reporting in the language Therap pointed him to. Despite Mr. Fowler’s testimony, Therap’s discussion on the reporting capabilities of its proposed solution seems to suggest that it has transactional reporting capabilities without using the words “transactional reporting.”⁶ Nonetheless, in light of the CPO’s finding with regard to MFA, the CPO need not decide this issue.

The evaluators assigned Pulselight a “pro” in the System Functionality criterion because its solution “[i]ncorporates both incident management and incident detection/data analytics.” Pointing Mr. Fowler to page 76 and page 70 of its proposal, Therap tried to get Mr. Fowler to acknowledge that Therap offered the same functionality. Mr. Fowler asserted there was a

⁵ Crediting Therap with MFA without more would unlikely have resulted in Therap receiving a sufficient increase in score of more than 131 points to win. However, Therap was only awarded 120 points of the 300 available for System Functionality so more than 131 points were available. Moreover, if Therap received unequal treatment here, there is a possibility it was treated unequally elsewhere. Therefore, it is theoretically possible had Therap been treated equally that the overall result could have been different.

⁶ The same appears to be true for FEI as well.

distinction between what Pulselight offered and what Therap offered. Mr. Fowler noted there is a difference between tracking incidents that have been reported as offered by Therap and analyzing data to detect incidents that have not been reported as offered by Pulselight. The CPO finds that a comparison of the two proposals supports Mr. Fowler's reasoning. Moreover, the CPO finds the evaluator comments are sufficient to make a distinction between Pulselight and Therap on this point.

Therap also alleges Therap was marked down for its "claims" feature while FEI received a favorable score for the same functionality. Presumably, Therap is referring to the con stating "No reference nor mention of claims or incident detection." During the hearing, Therap did not point to a pro that FEI received that in some way corresponded to this con nor is any apparent to the CPO. It is more likely Therap was referring to the pro for Pulselight discussed in the previous paragraph where Pulselight received a pro for "incident detection." To the extent this is the case, this matter is already addressed above.

In its Protest, Therap alleges that under System Functionality, other offerors received pros for "their untested, planned future implementation functionalities, planned future interfaces and future customizations," while inconsistent with these pros, Therap received a con for multiple major releases in a year. However, Therap does not identify the "untested, planned future implementation functionalities, planned future interfaces and future customizations" for which its competitors received pros and the CPO is unable to connect any listed pro for either FEI or Pulselight to any "untested, planned future implementation functionalities, planned future interfaces and future customizations."

Therap protest that on the "Approach and Implementation Support" evaluation criterion, there is no justification for it being the lowest scored vendor based on the content of its proposal. This is nothing more than a statement of Therap's opinion of the quality of its proposal and fails to state a claim.

Therap next protests its score for the "Experience, Qualifications and Staffing" evaluation criterion. Therap States:

This scoring is inexplicable given that the proposed project team possesses two decades of expertise in Medicaid and HHS programs, including specific personnel

with direct experience and intimate knowledge of South Carolina's system of care.

Again, this is nothing more than a statement of Therap's opinion and fails to state a claim.

Without reference to any particular evaluation criteria, Therap alleges that:

FEI was actually scored favorably for features it did not yet have, on the suggestion that it would provide them in the future. In fact, in one place, the notes indicate that FEI actually had the functionality, when in fact FEI clearly expressed that it was only in development. Therap's development plans were not treated equally.⁷

However, Therap's protest does not identify which features these are nor does Therap identify any where this is allegedly true. Moreover, the CPO was unable to find any pros on the Consensus Justifications for FEI connected to a feature that was to be developed in the future. However, FEI did receive a con for one such feature.

DECISION

For the foregoing reasons, the CPO grants the protest of Therap and remands this matter to DPS to proceed in accordance with the Procurement Code.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

⁷ The notes Therap refers to in this statement are not identified. No such comment appears in the Consensus evaluation

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2025)

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 2025 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 Globals, 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 366, 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.