

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

BEFORE THE CHIEF PROCUREMENT OFFICER

In the Matter of Protest of:

L&E Caring Network Foundation

Materials Management Office
RFP No. 5400003286
Intellectual Disability, Autism, Head &
Spinal Cord Injury Services
Department of Disabilities and Special
Needs

DECISION

CASE NO.: 2012-113

POSTING DATE: July 20, 2012

MAILING DATE: July 20, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from L&E Caring Network Foundation (L&E). With this request for proposals (RFP), the Materials Management Office (MMO) attempts to procure intellectual disability, autism, and spinal cord injury services for the Department of Disabilities and Special Needs (DDSN). In the letter, L&E protested MMO's intent to award because "L and E Caring was not selected to the bidder list."

In order to resolve the matter, the CPO conducted a hearing July 10, 2012. Appearing before the CPO were DDSN, represented by Tana Vanderbilt, Esquire and MMO, represented by John Stevens, State Procurement Officer. L&E chose not to attend.¹

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

¹ Clearly, L&E received notice of the hearing. On July 4, 2012, Mr. Steve Platt of L&E requested a continuance to the hearing because "The Law office that represent L&E Caring wants to review pass *[sic]* Discrimination with SCDDSN and related issues with Race and Ownership." The CPO responded by asking Mr. Platt's attorney to call to discuss the continuance request writing, "Do not assume the continuance will be granted, as it may not be." Neither Mr. Platt nor his attorney replied. Therefore, the hearing proceeded as scheduled. The CPO delayed the hearing for 30 minutes and called five telephone numbers provided by L&E with its proposal and the protest letter. Mr. Platt answered none of the calls. After the hearing, the CPO received a voice mail from Mr. Platt stating, "I knew I wasn't going to make that meeting so you can email that decision and I can pass it on to my lawyer and we will take it from there."

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On August 3, 2011, MMO issued the RFP. (Ex. 1)
2. On August 8, 2011, MMO issued Amendment # 1. (Ex. 2)
3. On August 23, 2011, MMO issued Amendment # 2. (Ex. 6)
4. On April 17, 2012, MMO posted an intent to award. (Ex. 7) L&E did not receive an award.
5. On April 23, 2012, L&E filed its protest with the CPO.

DISCUSSION

With this RFP, MMO attempts to contract with a pool of prequalified providers to provide various levels of care for DDSN clients suffering from intellectual disability, autism, and spinal cord injury. The RFP stated, “Award will be made to all responsive and responsible offerors whose offer is determined to be the (sic) advantageous to the State and who receive a minimum score in each of the five (5) categories as indicated in the Evaluation Factors – Proposals below. All awarded providers will be placed on a Qualified Provider List (QPL) from which people eligible for DDSN service may select.” (Ex. 1, p. 39, Award Criteria – Proposals) The evaluation factors with minimum scores were: (1) Ability to Address Assurances and Meet Standards of Service – 30 points, (2) Quality Management Functions – 18 points, (3) Qualifications, Capacity, Staffing/Training – 24 points, (4) Funding Plan/Rates – 18 points, and (5) Automation – 6 points. (Ex. 6, p. 3, Evaluation Factors – Proposals)

Offerors were asked to “indicate the populations of people you wish to serve” including intellectual disability/related disability, autism, and head and spinal cord injury. (Ex. 2) Offerors were also asked to “indicate for each population of people, the services you wish to provide” including various levels of care such as home support, employment services, day services, residential habilitation at various levels, financial management, services coordination, and early

intervention. Once the contracts are awarded to prequalified providers, eligible DDSN clients and their families will select their own providers.

The proposals were evaluated by two teams of evaluators. Team 1 evaluated the proposals for program issues including quality management and standards of care. Team 2 evaluated the proposals for finance issues including funding, rate/price, qualifications, capacity and training. Their evaluation of L&E’s proposal resulted in the following scores:

<i>Category</i>	<i>Minimum Score Required</i>	<i>Team 1’s Scores of L&E</i>	<i>Team 2’s Scores of L&E</i>
(1) Ability to Address Assurances and Meet Standards of Service	30 points	30 points	
(2) Quality Management Functions	18 points	9 points	
(3) Qualifications, Capacity, Staffing/Training	24 points		12 points
(4) Funding Plan/Rates	18 points		9 points
(5) Automation	6 points		6 points
Totals	96 points	39 points	27 points
Grand Totals	96 points required	66 points received	

L&E’s proposal fell short of qualifying for an award by 30 points.

LEGAL AUTHORITY

Pursuant to Section 11-35-2410(A) of the South Carolina Consolidated Procurement Code (Code), a determination by the State as to which proposal is the most advantageous, after taking into consideration price and the other evaluation criteria, is final and conclusive unless

such determination is “clearly erroneous, arbitrary, capricious, or contrary to law.” On several occasions, the South Carolina Procurement Review Panel (“Panel”) has held that it [the Panel] will not re-evaluate proposals and will not substitute its judgment for the judgment of the evaluators, who are often experts in their fields, or disturb their findings so long as they follow the requirements of the Code and the RFP, fairly consider all proposals and are not actually biased. *See, e.g. Protest of Santee Wateree Regional Transportation Authority*, Panel Case No. 2000-5 (reaffirming that the evaluation process need not be perfect as long as it’s fair and the Panel will not re-evaluate proposals); *Protest of Transportation Management Services, Inc.*, Panel Case No. 2000-3 (finding that the evaluation process is not required to be perfect and that the Panel will not re-evaluate proposals); *Protest of First Sun EAP Alliance*, Panel Case No. 1994-11 (noting that the Panel will not disturb the evaluators’ findings so long as they following the Code and the RFP’s requirements, fairly consider all proposals and are not actually biased); *Protest of Volume Services*, Panel Case No. 1994-8 (holding that the Panel will not substitute its judgment for that of the evaluators). In *Protest of Santee Wateree Regional Transportation Authority*, the Panel also explained that subjectivity is the hallmark of the RFP process and does not equate with arbitrariness. Moreover, the Panel has found that “the variation of evaluators’ scores alone is only proof of the subjective nature of the evaluation aspect of the RFP process.” *Protest of Travelsigns*, Panel Case No. 1995-8. Regardless, the protestant bears the burden of proof to demonstrate by a preponderance of the evidence that the evaluators’ determinations were flawed. *Id.*

DETERMINATION

Two teams of evaluators reviewed L&E’s proposal and determined that L&E did not meet the stated minimum standard for award. The CPO finds no evidence that the evaluation was

clearly erroneous, arbitrary, capricious, or contrary to law. Therefore, according to law and the Panel's precedence, the CPO has no authority to disturb their evaluation. The protest is denied.



R. Voight/Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised July 2012)

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 83.1 of the 2012 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, an incorporated business must retain 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).

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, 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.

March 30, 2012

Mr. Manos,

L&E Caring Network Foundation will be filling a protest against the discussion that L&E Caring Network Foundation was not added to list of Agency that are under Solicitation number 540003286 in South Carolina Department of Special Needs. The county to service are as follows; York, Chester, Lancaster, Fairfield, Sumter and Richland counties. The services are in the solicitations. We're a startup agency and have all the paper work in place to get started. The agency cannot show all of its physical Capabilities, training to show it have experience to run an agency and maintained a positive work environment to its clients, staff and customers that is affiliated with the agency. All this cannot be shown on just on paper. The agency is being pass over because of lack of time of not being business also, others(agencies) that have been

awarded have connection with the state and counties as a (workers) or have some conflict of interest of he or she own personal gain. That's clearly not right. Agencies that have contracts already in place somewhere within the same state and county should not be the only first agency receiving these contracts first. A start up agency should have the same rights as the ones that are up and running. That's not the case at this time and L and E Caring Network Foundation is not getting a fair chance.

Mr. Steven B. Platt-Executive Director

L and E Caring

A handwritten signature in black ink, appearing to be 'S. Platt', is written over a horizontal line.