

**STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

In Re: Protest of Addus Home Care, Inc.  
dba Care Pro Health Services

CASE NO.: 2014-129

Protest of Intent to Award to Access  
Health Care Services, Inc. dba Care  
Givers for Social Service Block Grant  
(SSBG) Homemaker Services,  
Solicitation No. #5400007440

POSTING DATE: August 28, 2014

MAILING DATE: August 28, 2014

The South Carolina Consolidated Procurement Code (the Code) grants the right to protest to any actual bidder who is aggrieved in connection with the intended award of a contract. S.C. Code Ann. § 11-35-4210(1)(b). This solicitation is for Social Service Block Grant (SSBG) Homemaker Services for the South Carolina Department of Social Services (DSS). Addus Home Care, Inc. dba Care Pro Health Services (Addus) protests the intended award of a contract to Access Health Care Services, Inc. dba Care Givers (Access). [Attachment 1] The Chief Procurement Officer<sup>1</sup> issues this decision without a hearing.

**FINDINGS OF FACT**

Request For Proposal Published:	03/06/2014
Addendum 1 Published:	03/28/2014
Intent to Award Posted:	06/04/2014
Protest Received	06/16/2014
Intent to Award Suspended	06/16/2014

**DISCUSSION**

This Request for Proposals was issued to secure providers of homemaker services for families or individuals in overcoming specific barriers in maintaining, strengthening, and safeguarding their functioning in the home by helping them to live as independently as possible in order to prevent

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<sup>1</sup> The Interim Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

or delay institutionalization. An Intent to Award was issued on June 4, 2014 to Access Health Care Services, Inc. dba Care Givers for Aiken, Allendale, Berkley/Charleston/Dorchester, Clarendon, Edgefield, Jasper, Kershaw, Lancaster, Laurens/Abbeville, Newberry, Orangeburg/Calhoun, Saluda, and Williamsburg Counties.<sup>2</sup>

Addus protested the intended contract award to Access Healthcare Services on several grounds, including a claim that incomplete bid information was provided to the review committee. Addus specifically alleged the following:

Scoring sheets from reviewer SW2 and ESI indicated that we did not provide a proposal "per site" and did not provide information related to staffing by county. Addus was requested to, and did supply "per site" budgets and staffing summaries to the Department. These were clearly not provided to these two reviewers as part of the evaluation resulting in significant deduction of points.

.... Only one of the scoring sheets provided indicated any evaluation of the associated cost proposal and no scoring sheets indicated points associated with cost....

Additionally, Scoring sheets from reviewer DBB3 indicate that Addus did not describe homemaker services. This was described in detail under Section IV of our Technical Proposal response.

The Department of Social Services responded to the protest in a letter dated July 24, 2014. The letter admitted the allegations quoted above.

## **DETERMINATION**

There is no dispute of fact in this matter. DSS admits that its evaluation process was defective. Accordingly, the protest of Addus is granted. The award of Contract No. 4400008481 to Access Health Care Services, Inc. dba Care Givers, is canceled and the solicitation of that contract is

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<sup>2</sup> The notice also awarded contracts to Senior Resources, Inc. for Richland County; and Union County Council on Aging, Inc. for Union County. No protest of these awards was timely filed. Accordingly, those awards are unaffected by this decision.

remanded to DSS for further proceedings pursuant to the Consolidated Procurement Code and regulations.<sup>3</sup>

For the Materials Management Office

A handwritten signature in black ink that reads "Michael B. Spicer". The signature is written in a cursive style with a large, prominent initial "M".

Michael B. Spicer  
Chief Procurement Officer

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<sup>3</sup> Those proceedings may include, for example, cancellation of the solicitation for these thirteen items in accordance with S.C. Code Ann. Reg. 19-445-2067(B).

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised June 2013)*

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>

**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 108.1 of the 2014 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  
1105 Pendleton Street, Suite 202, 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.**



Providing Quality Healthcare Since 1979

June 14, 2014

Mr. Voight Shealy  
Chief Procurement Officer  
State of South Carolina  
Material Management Office  
1201 Main Street  
Suite 600  
Columbia, SC 29201

Via E-mail: [Protest-mmo@mmo.state.sc.us](mailto:Protest-mmo@mmo.state.sc.us)

Mr. Shealy,

Please accept this letter as our formal protest of the intended contract award to Access Healthcare Services resulting from RFP # 5400007440 for SSBG Homemaker Services. First, we would like to thank Ms. Tina McDaniels and Ms. Valerie Duncan for their time and effort to provide us with the materials we requested and to answer our questions. We appreciate their assistance and responsiveness with our many requests.

As outlined in various sections of the Solicitation document and the South Carolina Procurement Code (Title 11 – Chapter 35) as referenced herein Addus HomeCare is basing our protest on the following:

The Department did not follow its required procurement process

*No Public Bid Opening*

Article 5 - Subarticle 3. SECTION 11-35-1520. Indicates that " Bids must be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids and in the manner prescribed by regulation of the board. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to public inspection at that time". There was no public bid opening associated with this procurement.

*Incomplete bid information was provided to the review committee*

Article 5 - Subarticle 3. SECTION 11-35-1520. Indicates that "All bids, in the procuring agency's sole judgment, needing clarification must be accorded that opportunity" and "The procurement officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality(such as the) failure of a bidder to furnish the required information concerning the number of the bidder's employees". Scoring sheets from reviewer SW2 and ES1 indicated that we did not provide a proposal "per site" and did not provide information related to staffing by county. Addus was requested to, and did supply "per site" budgets and staffing summaries to the Department. These were clearly not provided to these two reviewers as part of the evaluation resulting in significant deduction of points. (see attached cost proposal sheets)

Article 5 - Subarticle 3. SECTION 11-35-1520 (7) indicates Selection and Ranking. Proposals must be evaluated using only the criteria stated in the request for proposals and there must be adherence to weightings that have been assigned previously. Only one of the scoring sheets provided indicated any evaluation of the associated cost proposal and no scoring sheets indicated points associated with cost. As

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the lowest bidder in all but Union County, Addus should have received all possible points in this section. (See attached example sheet for reviewer JBD 5- Aiken county)

Additionally, Scoring sheets from reviewer DBB3 indicate that Addus did not describe homemaker services. This was described in detail under Section IV of our Technical Proposal response. Scoring sheets from reviewer JBD5 indicate we did not provide experience of the Agency Director. All Agency Director resumes were submitted with the proposal indicating their experience and education. Addus should have received all points for these sections. (See attached proposal response sheets and resumes)

*The department did not select the most responsible lowest cost bidder*

Article 3 - Subarticle 9, Section 11-35-1210 (2(c)) indicates the governmental body selections under procurement are subject to "obtaining the best prices for value received". Outside of Union County, Addus HomeCare was the lowest cost proposer.

Article 5 – Subarticle 1 Section 11-35-1410 indicates that a "Responsible bidder means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance". Access Healthcare has been in business less than one year and as such has no "past performance" on which to value their ability. Additionally, Access indicated in their proposal they have only one employee who is already serving five clients in the largest three county area (Berkley/Charleston/Dorchester) to be served under this proposal. This leaves no capacity for new clients to be managed in a timely manner. Addus currently provides services under this agreement in these counties and has sufficient resources to manage the current and any expanded caseload. (See attached employee schedule Access HealthCare)

The awarded entity provided erroneous and misleading information in their proposal.

Experience – Page 17, Tab 2.0 Section 1 (b) of Access HealthCare's submitted proposal indicates that the company has operated under two different company names and has been providing services under those companies since 1989. This is in fact erroneous. While their administrative management team does have experience in home care, the applicant corporation does not and has not operated since 1989. They have operated only since December of 2013. (See attached narrative Access HealthCare)

Employees – Exhibit 1-A: indicates that Robbin Harmon and Doreen Stubbs were hired as Nurse Supervisors by Access Healthcare on 6/1/2013. These two employees were in fact full time employees in administrative positions with Addus HealthCare on these dates. Their duties and responsibilities included full time management and oversight of our locations as well as managing after hours issues and client service coordination. They could not have been providing services in a supervisory capacity to another agency. (See Attached Exhibit 1-A Access HealthCare)

Financial Stability – Access Healthcare has been in business less than one year and as such, would not have audited financial statements or balance sheet proving their financial ability to manage a contract of this magnitude. Access also states in their proposal that they are providing all administrative oversight and management as in-kind resources to this agreement further destabilizing a small organization with few resources. As Addus did not receive financial information as a result of our request, we cannot provide additional detail at this time.

There was a post notice violation of the terms of award

Finally, pursuant Article 17 – Subarticle 1 Section 11-35-4220, we believe that Access Healthcare was in direct violation of the terms of the award letter and as such, also in violation of an order of the Chief Procurement Officer. Immediately upon receipt of the letter indicating the Department's intent to award, Access

representatives began contacting direct service staff employed by the current providers under this agreement indicating that they were in fact the "new provider" and that the staff was now required to work for them. This action was in violation of clear direction in the letter dated June 4, 2014 the contractor should not perform any work under this proposal prior to the effective date of the agreement. Additionally, this communication was a misrepresentation of their relationship with the Department as they are not yet a contracted entity.

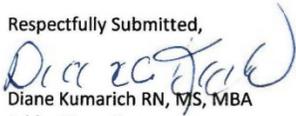
As the lowest cost provider, Addus should have received all 20 points for each county adding 300 points to our score which would have placed our total score at 5658 and a winning bid by 49 points. Additionally, had all the materials been provided to the Evaluation Committee reviewers, Addus would have scored another 200 or more points making our proposal the most responsive, responsible bid. (see attached scoring summary)

Subarticle 2, SECTION 11-35-4310 of the Procurement Code allows for various remedies including the award of the solicitation in a manner that complies with the provisions of the code. Given the inconsistencies and omissions in the review and application of the code as noted above, we are asking that the award be applied consistent with the procurement code and given to the most responsible, lowest cost bidder, Addus HealthCare, Inc. Additionally, Addus is requesting that under the authority of the Chief Procurement Officer outlined in Article 17 – Subarticle 1 Section 11-35-4220 of the code, that Access Healthcare be debarred from consideration of this procurement.

Thank you for your time and consideration of our request. We have enclosed various sections of the submitted proposals as well as scoring sheets and other relevant documentation. Should you need any further clarification or materials, please contact me at [Natlcontracts@addus.com](mailto:Natlcontracts@addus.com) (630-296-3400) or Mark Woodworth, [mwoodworth@addus.com](mailto:mwoodworth@addus.com) (803-758-4000).

We look forward to your response.

Respectfully Submitted,

  
Diane Kumarich RN, MJS, MBA  
Addus HomeCare