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July 16, 2021

Via e-mail and U.S. Postal Mail

Robert Carroll
Purchasing Manager, Anderson County
110 South Main Street, Room 115
Anderson, SC 29624
rcarroll@andersoncounty.org

Re: Protest of Intent to Award
RFP/Bid No. 21-043: Emergency Ambulance Services for Anderson County
Our File No. 069149/01500

Dear Mr. Carroll:

We represent Belton Emergency Medical Services d/b/a Belton EMS, Fork Rescue Squad, Inc., Iva Rescue Squad, Inc., Pelzer Rescue Squad d/b/a Pelzer EMS, and Thorne Ambulance Service, LLC (collectively “the Protestors”) in connection with Anderson County Bid No. 21-043 (the “Solicitation” or the “RFP”). We submit this letter pursuant to Anderson County Code § 2-634(k)(1) as the Protestors’ formal, written Protest of the intent to award the RFP as discussed in a July 6, 2021 meeting of the Public Safety Committee of the Anderson County Council.

We recognize that a contract has not yet been awarded, but, in light of the deadlines established in Code section 2-634(k)(1), we nevertheless promptly file this Protest. If you believe the Protest is, at present, premature, and if the County Council proceeds to award the contract as proposed by the Public Safety Committee, we will reassert our Protest at that time.

For the reasons explained more fully below, the contract award proposed and recommended by the Public Safety Committee should not be awarded because doing so would award the contract to a bidder whose bid is non-responsive, is contrary to the terms of the RFP and the documents attached thereto, is contrary to County Code, and does not represent the best value for the County and its citizens. Alternatively, the entire solicitation should be cancelled and rebid.

BACKGROUND

The Protestors are four nonprofit corporations located in Anderson County (the “County”) and one corporation headquartered in neighboring Greenville County. Each of them provides emergency ambulance services and, in many instances, they have provided such services to the citizens of the County for many decades and have served with great distinction. For many years,

and at present, the nonprofit Protestors have provided these services under contract with the County to serve specific geographic regions within the County.

On February 16, 2021, the County issued the RFP, seeking proposals for the provision of emergency ambulance services. The RFP and its attachments total 110 pages and contain specific descriptions of and specifications for the services to be provided, and set out specific prohibitions and requirements with which responsive bids must comply. Bids were due by May 13, 2021. All of the Protestors submitted timely, responsive bids.

On July 6, 2021, the Public Safety Committee of the County Council met to discuss the bids and which of them the Committee intended to propose or recommend to the full Council to be awarded the contract(s). In the course of the Committee's public discussion, it became readily apparent that the sole bid the Committee supported and will be recommending to the full Council—the bid of Priority Ambulance d/b/a Medshore Ambulance Service (“Medshore”)—is non-responsive, is contrary to the terms of the RFP and the documents attached thereto, is contrary to County Code, and does not represent the best value for the County and its citizens. The reasons why are explained more fully below.

ARGUMENT

Although the bids in response to the Solicitation have not yet been made publicly available, the public discussion by the members of the Public Safety Committee on July 6, 2021 described Medshore's bid in sufficient detail to give notice of the numerous improprieties of the intended award. As explained in greater detail in the paragraphs that follow, the bid and proposed award are deficient or many reasons including that they (1) violate clear prohibitions on conflicts of interest, (2) would not provide the services actually required by the RFP, (3) appear to violate the RFP's prohibition on communications with anyone other than the Contracting Officer, (4) propose to rely on an undisclosed subcontractor in violation of the RFP's terms, and (5) do not represent a good value for the County and its citizens.

First, even without examining the details of Medshore's bid, the bid is presumptively improper due to inherent conflict of interest. The County Code is clear: “Any purchase or contract . . . in which . . . any officer or employee of the county is financially interested, directly or indirectly, . . . shall be void if the other party knew or should have known of the interest or conflict.” Anderson Cnty. Code § 2-609(a). This is such an instance. Medshore's founder, long-time owner, and current stakeholder, Greg Shore, is a County employee. So too is Medshore's General Manager, Josh Shore. The conflict of interest is obvious. Nor is this an instance in which the financial interest is “so remote or indirect” as to be waivable. The contract at issue represents millions of dollars to be paid to a company whose part-owner and general manager are County employees. This is precisely the sort of scenario the Code prohibits.

Furthermore, the Solicitation itself prohibits the conflicts of interest that are inevitable when County employees own or lead companies that contract with the County for millions of dollars. *See* RFP Section I, Exhibit B, section (d) (requiring bidders to affirm that “No person

associated with Proposer’s firm is an employee of Anderson County.”).¹ This requirement is even broader than the one found in the County Code, and Medshore cannot comply with it. In addition to the fact that Medshore’s founder, part-owner, and general manager are employed in the County Coroner’s office, another employee in that office, Don McCown, also worked for many years at Medshore and, on information and belief, continues to have an ongoing association with and interest in the company. Whether any actual bias or conflict influenced the proposed award is not the question. The terms of the Code and the RFP are clear, and they are intended to avoid even the perception of conflict of interest. Medshore’s bid does not—and cannot—comply with those requirements.

Second, Medshore’s bid fails to provide the services actually described and requested in the RFP and, therefore, is nonresponsive. *See* RFP Section I(5)(v) (stating that “[a]ny proposal that fails to conform to the essential requirements of the Request for Proposals shall be rejected,” and “[a]ny proposal that does not conform to the applicable *specifications* shall be rejected”) (emphasis in original).² The Solicitation is clear that responsive bids must provide services that include Advanced Life Support (“ALS”).³ *See* RFP Section I(2)(a)(2); RFP Section IV, Basic Services; RFP Section IV, Minimum Clinical Levels.⁴ Bidders may do so either by providing ALS-equipped ambulances staffed by paramedics or by providing BLS-equipped ambulances that are supplemented by paramedic-staffed Quick Response Vehicles (“QRVs”) capable of providing ALS-level care. *Id.* Under either options, the RFP indicates the bidder should be capable of supplying ALS-level care, and thus its bid should be priced to include the provision of that more costly level of care.

Medshore’s bid, however, does neither. As the bid was described by Committee members at the July 6, 2021 meeting, Medshore’s bid apparently involves only the provision of BLS-level ambulances with the promise that this lower level of care will supposedly be supplemented by QRVs funded or supplied *by some undisclosed third party*. Accordingly, because Medshore’s bid involves only the provision of lower-level BLS care—not the more costly ALS care required by the RFP—its bid was apparently priced more cheaply than the other bidders’ bids that would provide the services and specifications actually requested by the RFP.

Third, Medshore’s bid appears to violate the RFP’s prohibition on communications with anyone other than the Contracting Officer. The RFP clearly prohibits the discussion or negotiations of the proposed bid during the period between the issuance of the solicitation and the award of the contract:

¹ Found on page 16 of the RFP package.

² Found on pages 11–12 of the RFP package.

³ ALS is a more costly and higher standard of care than Basic Life Support (“BLS”), and requires more extensive and costly equipment that is administered by paramedics (rather than by EMTs who have less training and medical skill).

⁴ Found on pages 3, 59, and 66, respectively, of the RFP package.

Proposer(s) agrees that during the time following issuance of the solicitation and prior to the final award of the contract, Proposer(s) shall not discuss this procurement with any party except the Contracting Officer. Proposer(s) shall not attempt to negotiate with any other parties, and shall not discuss any aspects of the procurement without prior written approval of the Contracting Officer.

RFP Section I(5)(j).⁵ The RFP further requires that “[a]ny information given to a prospective Proposer(s) about this solicitation shall be promptly furnished to other prospective Proposer(s) as an amendment.” RFP Section I(5)(l).⁶

There is reason to believe that, in violation of the foregoing requirements, a number of County Council members were in communication with Greg Shore (the County Coroner, who is also the founder of and a stakeholder in Medshore) during this timeframe, including in meetings with him at his office. In light of Medshore’s novel approach to the provision of ALS care—an approach that, as discussed in the preceding paragraphs is contrary to the RFP but is apparently agreeable to the Council Members on the Public Safety Committee—it appears that a negotiation or information regarding other aspects of the procurement were discussed with and communicated exclusively to Medshore in such a way that Medshore was at an advantage in proposing its bid. Such discussions, information, and negotiation during the time period in question were prohibited by the RFP and, when not shared equally with the other prospective bidders, severely prejudiced the Protestors and other prospective bidders.

Fourth, Medshore’s bid appears to violate the RFP’s prohibition on relying on subcontractors to provide the requested services. The Solicitation is clear that “Proposer(s) shall not subcontract work hereunder without the prior written consent of the County, and any such subcontract without consent of the County shall be null and void.” See RFP Section I(5)(aa).⁷ Based on the public comments of members of the Public Safety Committee in their July 6, 2021 meeting, it is apparent that Medshore’s bid relies on QRVs funded or supplied by some secret third party. Even assuming the use of subcontractors were permissible (and, as noted previously, it is not absent prior written permission), the failure to identify the subcontractor is itself a reason why such permission may not be granted. See *id.*

Fifth, Medshore’s bid does not represent the best value for the County and its citizens. Both the County Code and the RFP are clear that this contract(s) will be awarded not merely on the basis of the lowest price, but, rather, on the basis of which bid(s) provides the best overall value when considering a number of factors and circumstances. See Anderson County Code § 2-634(h);

⁵ Found on page 8 of the RFP package.

⁶ Found on page 9 of the RFP package.

⁷ Found on page 13 of the RFP package.

RFP Section I(4)(b).⁸ Medshore’s checkered past history with the County providing medical transport indicates it is not the best value available. Medshore has, in the recent past, struggled at times to respond timely to emergency calls, and sometimes has failed to respond *at all*, leading the County to fine Medshore for specific instances of failure to respond. *See* Pub. Safety Comm. meeting minutes (Dec. 16, 2019) at 2–19.⁹ County personnel noted at the time that these instances were not isolated issues with Medshore, and that the County had, up to that time, been “very lenient” with Medshore’s impermissibly slow response time or inability to respond. *Id.*

More recently, Medshore has had to abandon contracts with the County after being fined for its inability to provide the services it was being paid for. *See* Pub. Safety Comm. meeting minutes (Aug. 14, 2020) (noting in part that “Medshore/Priority has requested to give the contracts of Ebenezer and Williford back to Anderson County. . . . Even though the County has been paying for the contracts of Ebenezer and Williford and not receiving the service they are unable to receive funding back. Medshore was fined \$9,000 for June and there will be a fine for July.”).¹⁰

While there may have been excuses for these shortcomings, they do not represent a reliable track record or a best value for the County. The apparent intent to award another contract to Medshore—and this time not just a contract for one zone of the County but for the *entire thing*—is unsupported, unjustifiable, and would be an abuse of discretion.

CONCLUSION

Any one of the foregoing reasons provides a sufficient basis to cancel or refuse to award the contract award that it appears the Public Safety Committee and County Council is prepared to award to Medshore under RFP No. 21-043. Taken together, the foregoing reasons provide more than sufficient justification to cancel or refuse that award or, at minimum, to cancel the solicitation entirely and rebid it on a fair and neutral playing field that complies with applicable law.

Very truly yours,



Miles E. Coleman

*Counsel for Belton EMS, Fork Rescue Squad, Inc.,
Iva Rescue Squad, Inc., Pelzer EMS, and Thorne
Ambulance Service, LLC*

⁸ Found on page 6 of the RFP package.

⁹ Available at <https://www.andersoncountysc.org/wp-content/uploads/2021/02/Public-Safety-Committee-Mtg.-Thursday-July-22020.pdf>.

¹⁰ Available at <https://www.andersoncountysc.org/wp-content/uploads/2021/02/Public-Safety-Committee-Meeting-Friday-October-232020.pdf>.