



SPECIAL TELEPHONIC MEETING MINUTES
Wednesday, August 11, 2021

Location: E.T. Woolfolk State Office Building
501 North West Street, Room 1302
Jackson, Mississippi

Board Members Attending Via Teleconference:

Billy Morehead, Chair
Leila Malatesta, Vice-Chair
Rita Wray
Norman McLeod
David Russell

Board Member Absent: Liz Welch, Department of Finance and Administration

DFA Staff Members Present: Aubrey Leigh Goodwin
Liz Bolin, Special Assistant Attorney General
Ross Campbell
Brittney Thompson
Suzanne Hudson
Liz DeRouen
Kevin Griffin

DFA Staff Members Attending Via Teleconference:

Catoria Martin, Special Assistant Attorney General

Guest Attending Via Teleconference:

Matt Dry, PEER

FC&E Engineering, LLC (FC&E/Protestor)
Richard Harrell, Director of Operations
David B. Hericks, Tetra Tech Principal Oceanographer/Hydrographer
James (Sam) B. Stribling, Tetra Tech Director

Mississippi Department of Environmental Quality (MDEQ/Agency)
Tabatha Baum, Senior Attorney
Melanie Green, Accounting Director, Office of Restoration

National Oceans and Applications Research Center (NOARC/Intended Awardee):
David Brannon, President
Quinn Houchin, Secretary/Treasurer
Natalie Guess, NG Consulting
Joel Lawhead, Vice President NVision Solutions

Ms. Goodwin identified all participants, both present and those attending via teleconference.

I. Call to Order

The meeting was called to order by Chair Billy Morehead.

II. Consideration of Protest

A. Protest; FC&E Engineering, LLC (FC&E) v. Mississippi Department of Environmental Quality (MDEQ); Contract for Benthic Mapping Services (Contract # 8200056439)

1. FC&E (Protestor)

- Mr. Harrell presented arguments on behalf of the Protestor. He reserved five (5) minutes for rebuttal.

2. Mississippi Department of Environmental Quality (Agency)

- Ms. Baum presented arguments on behalf of the Agency.

3. National Oceans and Applications Research Center (NOARC)

- Mr. Brannon and Mr. Lawhead presented NOARC's response to the protest.

4. FC&E Rebuttal

- Mr. Harrell presented the rebuttal for the Protestor.

Following rebuttal, each party was permitted to make final statements.

B. Record on Appeal

- FC&E Protest to MDEQ dated May 21, 2021
- MDEQ Response dated May 26, 2021
- FC&E Protest to PPRB dated June 1, 2021
- MDEQ Response dated June 11, 2021

The Protest documents are attached to these Minutes as **Attachment A.I, A.II, A.III, and A.IV.**

Action: A motion was made by Ms. Malatesta to close the meeting to determine whether or not to declare an executive session. The motion was seconded by Mr. McLeod and unanimously approved by all members present.

Mr. Morehead announced the meeting would close while the public was excused from the meeting so that the Board could determine whether or not to go into Executive Session. Only DFA staff and Board members would remain on the teleconference while the Board members determined whether an Executive Session was appropriate.

Ms. Goodwin outlined the procedure for participants to reenter the meeting after the conference line was muted for the Board to discuss whether Executive Session would be entered or not.

Action: Ms. Malatesta made a motion to go into Executive Session in accordance with Mississippi Code Section 25-41-7(4)(b) for the purpose of strategy sessions or negotiations with respect to issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the PPRB. The motion was seconded by Ms. Wray and unanimously approved by all members present.

After the conference line was unmuted, Mr. Morehead announced to the public that the Board was entering Executive Session in accordance with Mississippi Code Section 25-41-7(4)(b) for the purpose of strategy sessions or negotiations with respect to issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the PPRB. Everyone except the Board members and DFA staff was excused until the Board concluded its Executive Session.

Ms. Goodwin outlined the procedure for participants to reenter the meeting when the Board exits Executive Session.

III. Executive Session

While the public was excused from the teleconference, only discussion of the protest was had.

Motion: A motion was made by Ms. Malatesta to deny the protest. The motion was seconded by Mr. McLeod and unanimously approved by all members present.

Motion: A motion was made by Ms. Wray to approve the MDEQ staff's intent to award to NOARC and direct counsel for the Board to prepare a written order in conformance therewith. The motion was seconded by Ms. Malatesta and unanimously approved by all members present.

Motion: A motion was made by Ms. Malatesta to exit Executive Session and return to Open Session. The motion to exit the session was seconded by Mr. McLeod and unanimously approved by all members present.

Ms. Goodwin identified all participants as they rejoined the Open Session of the teleconference meeting which reconvened at 12:00 p.m.

Mr. Morehead announced that the Board had exited Executive Session, and pursuant to discussion held during Executive Session, the board made two decisions; (1) to deny the protest appeal, and (2) to uphold MDEQ's notice of intent to award to NOARC and direct counsel for the Board to prepare a written order in conformance therewith.

Motion: A motion was made by Mr. McLeod to accept the decisions made by the Board during Executive Session, and to add the MDEQ/NOARC Contract to the agenda. The motion was seconded by Ms. Malatesta and unanimously approved by all members present.

IV. Other Business

A. DFA Office of Personal Service Contract Review (OPSCR)

Consideration of Contract for Board Action

1. **Requesting Agency:** Mississippi Department of Environmental Quality

Supplier: National Oceans Applications Research Center

Contract #: 8200056439

Term: 09/01/2021-02/28/2023

Total Value: \$199,650.00

**New
\$199,650.00**

Summary of Request: The term of the contract is eighteen months with optional extensions, not to exceed a total contract period of five years. The Contractor will provide benthic habitat mapping services in the Western Mississippi sound on an as needed basis, related to natural resource restoration projects implemented as a result of the 2010 *Deepwater Horizon* Oil Spill. The Contractor will collect physical characterization data for potential and existing oyster reef locations in the project area. The Contractor was selected through a Request for Proposals with nine respondents. One protest was received and resolved by the PPRB. The Agency requests an exception to PPRB OPSCR Rules and Regulations 3-202.08.2 for failing to post the RFP amendments on the Agency's website. OPSCR has reviewed this request and has no concerns that granting this exception will affect competition, fairness, or transparency, as the Agency emailed the amendments directly to the prospective respondents. Proof of Contractor's valid certificate of insurance, a protest memo, and the updated contract must be received from the Agency prior to processing the contract.

Staff Recommendation: This request has been reviewed for compliance by OPSCR staff and, upon granting the exception to OPSCR Rules and Regulations Section 3-202.08.2 and receipt of the Proof of Contractor's insurance, a protest memo, and the updated contract complies with PPRB OPSCR Rules and Regulations and all legal requirements. OPSCR recommends granting the exception and approval of the contract as requested.

Projected Budget for Life of the Contract: \$665,500.00

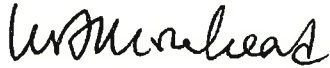
Action: A motion was made by Mr. McLeod to approve the staff recommendation as presented. The motion was seconded by Ms. Malatesta and unanimously approved by all members present.

B. Next Regular PPRB Meeting September 1, 2021 at 9:00 a.m.

V. Adjournment

Action: A motion was made by Mr. McLeod to adjourn. The motion was seconded by Mr. Russell and unanimously approved by all members present.

These Minutes of the Public Procurement Review Board were approved by the members on the 1st of September, 2021.



Billy Morehead, Chair



Date



STATE OF MISSISSIPPI
GOVERNOR TATE REEVES
DEPARTMENT OF FINANCE AND ADMINISTRATION
LIZ WELCH
EXECUTIVE DIRECTOR

NOTICE

A Special Meeting of the
PUBLIC PROCUREMENT REVIEW BOARD

will be held Wednesday, August 11, 2021
9:00 a.m.

**This Meeting will be via teleconference.
Public access to the meeting will be provided telephonically.
For access to the call, please send a request to PPRB@dfa.ms.gov**



PUBLIC PROCUREMENT REVIEW BOARD

Telephonic Special Meeting
August 11, 2021
9:00 a.m.

BOARD MEMBERS ATTENDING VIA TELECONFERENCE

Billy Morehead

Leila Malatesta

Rita Wray

Norman McLeod

David Russell



PUBLIC PROCUREMENT REVIEW BOARD

Telephonic Regular Meeting
August 11, 2021
9:00 a.m.

STAFF ATTENDING VIA TELECONFERENCE

NAME

AGENCY/COMPANY

Torri Martin

Special Assistant Attorney General



PUBLIC PROCUREMENT REVIEW BOARD

Telephonic Special Meeting
August 11, 2021
9:00 a.m.

GUESTS ATTENDING VIA TELECONFERENCE

| <u>NAME</u> | <u>AGENCY/COMPANY</u> |
|---------------|---|
| Matthew Dry | PEER |
| Tabatha Baum | Mississippi Department of Environmental Quality |
| Melanie Green | Mississippi Department of Environmental Quality |

FC&E Engineering, LLC:

Richard Harrell, Director of Operations

David B. Hericks, Tetra Tech Principal Oceanographer/Hydrographer

James (Sam) B. Stribling, Tetra Tech Director

National Oceans and Applications Research Center:

David Brannon, President

Quinn Houchin, Secretary/Treasurer

Natalie Guess, NG Consulting

Joel Lawhead, Vice President NVision Solutions



SPECIAL TELEPHONIC MEETING AGENDA
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9:00 a.m.

This Meeting will be via teleconference. Public access to the meeting will be provided telephonically. For access to the call, please send a request to PPRB@dfa.ms.gov

I. Call to Order

II. Consideration of Protest

A. Protest; FC&E Engineering, LLC (FC&E) v. Mississippi Department of Environmental Quality (MDEQ); Contract for Benthic Mapping Services (Contract # 8200056439)

1. Protestor will have 20 minutes to present; may reserve 5 minutes for rebuttal
2. Agency will have 20 minutes to present
3. Intended Awardee will have 10 minutes to present
4. Protestor will have 5 minutes for rebuttal

Representative for FC&E (Protestor):

Richard Harrell, Director of Operations
David B. Hericks, Tetra Tech Principal Oceanographer/Hydrographer
James (Sam) B. Stribling, Tetra Tech Director

Representatives for MDEQ (Agency):

Tabatha Baum, Senior Attorney
Melanie Green, Accounting Director for the Office of Restoration

Representatives for National Oceans and Applications Research Center (NOARC)(Intended Awardee):

David Brannon, President
Quinn Houchin, Secretary/Treasurer
Natalie Guess, NG Consulting
Joel Lawhead, Vice President NVision Solutions
Ryan Dodd, Chief Hydrographer NVision Solutions

B. Record on Appeal

- i. FC&E Protest to MDEQ dated May 21, 2021
- ii. MDEQ Response dated May 26, 2021
- iii. FC&E Protest to PPRB dated June 1, 2021
- iv. MDEQ Response dated June 11, 2021

III. Other Business

A. Next Regular PPRB Meeting September 1, 2021 at 9:00 a.m.

IV. Adjournment

Attachment A

Record on Appeal

- I. FC&E Protest to MDEQ dated May 21, 2021
- II. MDEQ Response dated May 26, 2021
- III. FC&E Protest to PPRB dated June 1, 2021
- IV. MDEQ Response dated June 11, 2021

Attachment A.I

Record on Appeal

FC&E Protest to MDEQ dated May 21, 2021

May 21, 2021



Mississippi Department of Environmental Quality (MDEQ)
Attn: Melanie Green
515 East Amite Street
Jackson, Mississippi 39201

Subject: PROTEST of Intent to Award RFP No. V090517
Habitat Mapping Services-Oysters Phase I

Dear Ms. Green,

FC&E Engineering, LLC (FC&E) with our subcontracting partner Tetra Tech, Inc. (Tetra Tech) is protesting the MDEQ's decision to rescind the Notice of Intent to Award to our team on the project "*Benthic Habitat Mapping Services-Western Mississippi Sound*" (RFP No. V090517). MDEQ first issued a Notice of Intent to Award to FC&E on April 7, 2021 and then subsequently issued a second Notice to Award to NOARC on May 14, 2021. In our protest we are in no way maligning or disparaging the qualification of the NOARC team or other potential proposers on this submittal however, we believe several issues need to be further considered in this matter and that the FC&E team should remain the chosen solicitor or if not then based on the facts demonstrated below the entire project be resolicited with a new RFP. In addition, we are requesting a meeting with yourself and MDEQ's Executive Director to further explain our argument before a decision is rendered on this matter.

1. MDEQ initially scored the proposals and the FC&E proposal scored the highest and was selected as the winning proposal. While we understand DFA's position and regulations that the pricing portion must be objective, there was no formula included in the original RFP. We find no mention in DFA's regulations that states the formula that DFA staff imposed on MDEQ is required or the only acceptable formula. In fact, we believe by using that formula of lowest proposal costs divided by the offeror's costs provides an unlevel scoring field, especially in this case where the level of services proposed was drastically different. Yes, the lowest cost proposal is awarded the full 35 points but, in this case, their proposed service was of a clearly lessor product, almost to the point that their proposal should not have been deemed acceptable.
2. Many of the proposals did not provide sufficient detail to truly determine what their actual costs would be for the entire effort and thus do not meet the requirements for detailed costing.
3. A standard cost sheet, which would have allowed proposed methods, products and level of service to be compared and scored on an equal playing field, was not provided in the RFP. As a result of not having a standardized bid sheet there are significant differences between the level of service included in offers pricing tables. We feel that our proposal is superior to NOARC and other offeror's proposals and that it would

provide MDEQ with the best product and useable data. By using the formula imposed by DFA of ratioing our costs against a proposed product that was inferior, and thus significantly cheaper, greatly lowered our available points from the maximum of 35. If similar proposals were considered in the DFA ratio formula, the outcome would be dramatically different.

4. One option might be to tier the proposals into two or possibly three groups from the level of technical and managerial factors scoring. Basically, take the technical and managerial scoring and divide them into the top tier, middle tier and bottom tier based on that scoring. Then the DFA formula might be applied to each of the tiers using the lowest price of each tier against the others in that tier. This would provide a much more equitable comparison than just rating the price of the lowest cost product that is clearly a much inferior offered product against a higher price proposal that offers MDEQ much more useable data, a higher level of services and what we believe with our proposal meets the intent of what was being solicited in the RFP.
5. Due to not having a standardized bid sheet, many of the proposals used a wide variety of approaches for presenting and calculating costs. For instance, the NOARC costs only included personnel costs and did not include any costs for equipment, travel, mobilization, and it is not clear if it even includes personnel costs for post processing and other activities that would be required to provide MDEQ with their desired product. The NOARC proposal also lacks equipment rates. In fact, many of the proposals are not clear on how they determined price, whereas our proposal clearly details each price and includes total and complete expected costs to provide MDEQ with the final desired products of the RFP. Therefore, we believe MDEQ's original scoring should stand and if not, then a new RFP should be issued where a detailed cost sheet is required from every submitter so that proposals can be clearly judged on an apples-to-apples comparison and not an apples-to-oranges situation. The variation in the products proposed by the all offerors differs greatly and thus will greatly impact the cost scoring utilizing DFA's ratio formula for Price and ultimately the quality and useability of the product delivered to MDEQ.
6. FC&E offered several options in their proposal for this work. If MDEQ was going to use the lowest costs proposal as a basis for judging all proposals then it should likewise use FC&E's lowest cost option in its scoring. In addition, we should be provided the opportunity to provide only our personnel costs for comparison to NOARC's costs since that was all they provided. Our proposal cost points should be calculated on that basis and not our total costs since that was not provided by NOARC and others.
7. While the DFA's regulations require objective scoring, nowhere in their regulations does it specify the formula imposed by DFA staff onto MDEQ. This requirement and DFA formula substantially change the RFP and resulting scores. Since this was not included in the RFP as issued, we believe it creates an unfair and undocumented basis for evaluation that is arbitrary and capricious. Either MDEQ should be allowed to

score the proposals as they originally intended or the entire effort should be restarted and a new RFP issued.

8. It's important to note that MDEQ's original evaluation and selection was not protested. This suggests that MDEQ's original scoring was appropriate, justified, and equitable. It was only the imposing of the DFA formula and subsequent rescoring that has now created conflict and this protest.
9. The necessity for using the original scoring or issuing a new RFP is further evidenced by MDEQ's recent extension and amendment to a similar RFP to account for this newly imposed DFA scoring formula. If it was not inherent to process and did not result in a fundamental change of the RFP in question, then why was there a need to alter an RFP for similar service that had not closed yet?
10. This arbitrary and capricious decision to renege on the Notice of Intent to award to FC&E causes us substantial loss not just in the RFP in question but also the chance to submit on a subsequent RFP for benthic services by MDEQ that was issued recently. Because FC&E had received an intent to award and had allocated precious resources to this effort, the business decision was made to provide MDEQ the best available product with our available resources and not submit on the second RFP. So now after the second RFP is set to close, we find out that MDEQ has been forced to arbitrarily and capriciously rescore proposals and not award to FC&E causing us to lose out on two potential projects.
11. NOARC, if selected, is a government and private non-profit corporation by its own statement. While NOARC's proposal and price is vague as to not adequately list equipment or provide equipment pricing, it also does not state whether they intend to utilize state property (University vessels, boats, sonar equipment, computers and other equipment). The procurement packet has no mention of such and does not include the necessary statements per DFA regulations.

7-114 UTILIZATION OF STATE PROPERTY BY CONTRACTOR If a contractor will be utilizing State property (office space, equipment, etc.) for the provision of services, the procuring agency shall submit a written notification to the Bond Commission explaining the property to be used. A copy of this letter must be submitted to the PPRB as part of the procurement packet.

12. NOARC in many cases provides incomplete descriptions and costing. For instance, NOAC's costing does not adequately provide an overall budget and with their proposal indicating a 100-day time period we believe would indicate their overall budget would be significantly higher than the personnel-only costs they provided (i.e. that 100-days of sonar, vessel, positioning equipment and other costs should be expected in the overall budget).
13. We further support MDEQ's letter to DFA that their original scoring was legally within the regulations as specified but also fully meets the intent of the regulations

and this decision by DFA is arbitrary and capricious and if accepted warrants a fundamental change in the RFP after proposals were submitted.

In our requested meeting we would like to provide MDEQ with additional information and details that we feel are proprietary or confidential and would not be appropriate to include in this Protest that would be subject to FOIA/public records requests. The FC&E/Tetra Tech team understands data and information needs for coastal restoration and management, including for oyster reefs and stabilization using living shorelines, as well as other innovative approaches. Our team will provide the highest quality mapping design and superior data integrity in the context of project goals/objectives, and budgetary guidelines. Please feel free to contact me with any questions you might have on our qualifications at 601-824-1860 or rharrell@fce-engineering.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Harrell".

Mr. Richard Harrell, P.E., BCEE

Director of Operations, FE&E Engineering, LLC

Cc: Brittney Thompson <Brittney.Thompson@dfa.ms.gov>

Attachment A.II

Record on Appeal

MDEQ Response dated May 26, 2021



STATE OF MISSISSIPPI
TATE REEVES
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
CHRIS WELLS, EXECUTIVE DIRECTOR

May 26, 2021

VIA E-MAIL

Office of Personal Services Contract Review & Public Procurement Review Board
ATTN: Brittany Thompson
501 North West St, Suite 700 E
Jackson, MS 39201

Re: Protest of MDEQ's Intent to Award Contract resulting from the Request for Proposals for Benthic Habitat Mapping Services – Western Mississippi Sound

Dear Ms. Thompson,

The Mississippi Department of Environmental Quality ("MDEQ") has received the attached protest from FC&E Engineering, LLC. The *Public Procurement Review Board, Office of Personal Service Contract Review Rules and Regulations*, Section 7-112.02, requires the Agency Head to issue a decision on a protest in writing, but also specifically states that the Agency Head will refuse to decide any protest when a matter involved is the subject of a proceeding before the Procurement Review Board or has been decided on the merits by the Board. On April 23, 2021, MDEQ sent a letter to Ms. Brittney Thompson, Office of Personal Service Contract Review ("OPSCR"), which presented our position regarding OPSCR's requirement to use a formula to score price. Subsequently, Ms. Melanie Green presented MDEQ's position on this matter to the Public Procurement Review Board ("PPRB" or "Board") at the May 5, 2021 PPRB meeting and was directed by the Board to coordinate with OPSCR on a formula that could be agreed upon by both agencies. As such, MDEQ sent a request on May 6, 2021 to use the following formula for scoring price: (Lowest price/Offeror's price)*35 - then multiplying that answer by the % of the other factors so that the price is weighted with all considerations taken into account. On May 10, 2021, Ms. Thompson rejected MDEQ's proposed formula, at which point MDEQ applied the following formula provided by Ms. Thompson: (Lowest price/Offeror's price)*35. This was done in order to rescore price and award a contract under the procurement. MDEQ acted under the advisement of OPSCR and issued a new Notice of Intent to Award to the National Oceans and Applications Research Center ("NOARC") based on the price recalculation and resulting change in ranking. Because the basis of FC&E Engineering, LLC's protest is a result of the requirements imposed on MDEQ by OPSCR and the Board, and because the Board previously tabled the matter pending the above-described rescoring, MDEQ will not make a decision regarding this protest and, as such, is forwarding this protest to OPSCR and PPRB for a decision. If you have any further questions, please contact Melanie Green by e-mail at mgreen@mdeq.ms.gov or by phone at (601) 961-5270.

Sincerely,

Chris Wells
Executive Director

Attachment A.III

Record on Appeal

FC&E Protest to PPRB dated June 1, 2021

June 1, 2021



Mississippi Department of Finance and Administration

Attn: Brittney Thompson
501 North West Street, Suite 700 E
Jackson, MS 39201
Brittney.Thompson@dfa.ms.gov

Mississippi Department of Environmental Quality (MDEQ)

Attn: Melanie Green
515 East Amite Street
Jackson, Mississippi 39201

Subject: PROTEST of Intent to Award MDEQ RFP No. V090517
Habitat Mapping Services-Oysters Phase I

Dear Ms. Thompson,

FC&E Engineering, LLC (FC&E) with our subcontracting partner Tetra Tech, Inc. (Tetra Tech) is protesting the decision to rescind the Notice of Intent to Award to our team on the project "*Benthic Habitat Mapping Services-Western Mississippi Sound*" (RFP No. V090517). MDEQ has deferred this protest to DFA as they consider this is the subject of a proceeding before the Procurement Review Board and as MDEQ's position is also that of opposition to the DFA staff in utilization of an arbitrary formula to score price.

MDEQ first issued a Notice of Intent to Award to FC&E on April 7, 2021 and then subsequently issued a second Notice to Award to NOARC on May 14, 2021. In our protest we are in no way maligning or disparaging the qualification of the NOARC team or other potential proposers on this submittal. However, we believe several issues need to be further considered in this matter and that the FC&E team should remain the chosen solicitor or if not then based on the facts demonstrated below the entire project be resolicited with a new RFP. In addition, we are requesting a meeting with yourself and DFA's Executive Director to further understand the required use of a formula and scoring criteria that was not included in the original RFP before a hearing is scheduled with the PPRB or a decision is rendered on this matter.

1. MDEQ initially scored the proposals and the FC&E proposal scored the highest and was selected as the winning proposal. While we understand DFA's position and regulations that the pricing portion must be objective, there was no formula included in the original RFP. We find no mention in DFA's regulations that states the formula that DFA staff imposed on MDEQ is required or the only acceptable formula. In fact, we believe by using that formula of lowest proposal costs divided by the offeror's costs provides an unlevel scoring field, especially in this case where the level of services proposed was drastically different. Yes, the lowest cost proposal is awarded

the full 35 points but, in this case, their proposed service was of a clearly lesser product, almost to the point that their proposal should not have been deemed acceptable.

2. Many of the proposals did not provide sufficient detail to truly determine what their actual costs would be for the entire effort and thus do not meet the requirements for detailed costing.
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8. It's important to note that MDEQ's original evaluation and selection was not protested. This suggests that MDEQ's original scoring was appropriate, justified, and equitable. It was only the imposing of the DFA formula and subsequent rescoring that has now created conflict and this protest.
9. The necessity for using the original scoring or issuing a new RFP is further evidenced by MDEQ's recent extension and amendment to a similar RFP to account for this newly imposed DFA scoring formula. If it was not inherent to process and did not result in a fundamental change of the RFP in question, then why was there a need to alter an RFP for similar service that had not closed yet?
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procuring agency shall submit a written notification to the Bond Commission explaining the property to be used. A copy of this letter must be submitted to the PPRB as part of the procurement packet.

12. NOARC in many cases provides incomplete descriptions and costing. For instance, NOAC's costing does not adequately provide an overall budget and with their proposal indicating a 100-day time period we believe would indicate their overall budget would be significantly higher than the personnel-only costs they provided (i.e. that 100-days of sonar, vessel, positioning equipment and other costs should be expected in the overall budget).
13. We further support MDEQ's letter to DFA that their original scoring was legally within the regulations as specified but also fully meets the intent of the regulations and this decision by DFA is arbitrary and capricious and if accepted warrants a fundamental change in the RFP after proposals were submitted.

In our requested meeting we would like to provide MDEQ with additional information and details that we feel are proprietary or confidential and would not be appropriate to include in this Protest that would be subject to FOIA/public records requests. The FC&E/Tetra Tech team understands data and information needs for coastal restoration and management, including for oyster reefs and stabilization using living shorelines, as well as other innovative approaches. Our team will provide the highest quality mapping design and superior data integrity in the context of project goals/objectives, and budgetary guidelines. Please feel free to contact me with any questions you might have on our qualifications at 601-824-1860 or rharrell@fce-engineering.com.

Sincerely,



Mr. Richard Harrell, P.E., BCEE

Director of Operations, FE&E Engineering, LLC

Cc: Melanie Green, MDEQ

Attachment A.IV

Record on Appeal

MDEQ Response dated June 11, 2021



STATE OF MISSISSIPPI
TATE REEVES
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
CHRIS WELLS, EXECUTIVE DIRECTOR

June 11, 2021

VIA E-MAIL

Office of Personal Services Contract Review ("OPSCR") & Public Procurement
Review Board ("PPRB")
ATTN: Brittany Thompson and Torri Martin
501 North West St, Suite 700 E
Jackson, MS 39201

Re: Protest of MDEQ's Intent to Award Contract resulting from the Request for Proposals for Benthic
Habitat Mapping Services – Western Mississippi Sound ("RFP")

Dear Ms. Thompson and Ms. Martin,

The Mississippi Department of Environmental Quality ("MDEQ") is submitting the following responses to the protest letter OPSCR/PPRB and MDEQ received dated June 1, 2021 by FC&E Engineering, LLC. (FC&E) on this RFP ("Protest Letter"). Responses are provided below with the corresponding paragraphs from the Protest Letter.

2. Many of the proposals did not provide sufficient detail to truly determine what their actual costs would be for the entire effort and thus do not meet the requirements for detailed costing.

MDEQ Response: Under Section V, Required Information, Subsection (B), Price was required to be provided, *at a minimum*, as follows in response to the RFP: "[p]rovide an overall budget/price to complete the services, including an hourly rate schedule for each position the offeror intends to utilize to provide the services to be performed under this RFP, including the hourly rate schedules of any proposed subcontractors." All of the proposals provided, *at a minimum*, hourly rates for personnel and an overall budget to provide the services requested, meeting the requested minimum requirement. However, sufficiency of the information/detail provided supporting costs/price, is reflected in the scoring of the applicable Cost and Technical evaluation criteria by the Evaluation Committee. This was also previously considered in the scoring of the standalone Cost Factor, Section VI(C)(4)(a)(i), by the Evaluation Committee in the original scoring process, before being directed to re-score Price based on a formula.

3. A standard cost sheet, which would have allowed proposed methods, products and level of service to be compared and scored on an equal playing field, was not provided in the RFP. As a result of not having a standardized bid sheet there are significant differences between the level of service included in offers' pricing tables. We feel that our proposal is superior to NOARC and other offeror's proposals and that it would provide MDEQ with the best product and useable data. By using the formula imposed by DFA of ratioing our costs against a proposed product that was inferior, and thus significantly cheaper, greatly lowered our available points from the maximum of 35. If similar proposals were considered in the DFA ratio formula, the outcome would be dramatically different.

MDEQ's Response: A standard cost sheet/bid form/bid sheet is required for an Invitation for Bids under the applicable law or regulations, but not required for a Request for Proposals type of procurement. A Petition for Relief was requested by MDEQ and approved by OSPSCR/PPRB for these services. MDEQ requested this because of various reasons supported under the procurement regulations and laws, which includes the need for flexibility in evaluating the differing price and contractual factors, as well as quality factors, that include technical and performance capability and the technical content of the proposal without price being the primary consideration for contract award. The services requested could be performed by various methodologies, using various technologies. Therefore, the use of a cost sheet/bid form/bid sheet outlining required costs/price (i.e. hourly rates, equipment rates, etc. separately) does not resolve the issue of comparing and scoring proposals on the same level if a proposer does not provide the same personnel positions or the same equipment/technology to perform the specific methodology they propose under the RFP.

5. Due to not having a standardized bid sheet, many of the proposals used a wide variety of approaches for presenting and calculating costs. For instance, the NOARC costs only included personnel costs and did not include any costs for equipment, travel, mobilization, and it is not clear if it even includes personnel costs for post processing and other activities that would be required to provide MDEQ with their desired product. The NOARC proposal also lacks equipment rates. In fact, many of the proposals are not clear on how they determined price, whereas our proposal clearly details each price and includes total and complete expected costs to provide MDEQ with the final desired products of the RFP. Therefore, we believe MDEQ's original scoring should stand and if not, then a new RFP should be issued where a detailed cost sheet is required from every submitter so that proposals can be clearly judged on an apples-to-apples comparison and not an apples-to-oranges situation. The variation in the products proposed by the all offerors differs greatly and thus will greatly impact the cost scoring utilizing DFA's ratio formula for Price and ultimately the quality and useability of the product delivered to MDEQ.

MDEQ Response: Please see MDEQ's Response to Nos. 2 & 3 above. Please note that NOARC confirmed in their debriefing, which occurred prior to issuance of the new Notice of Intent to Award, that the total budget and personnel hourly rates provided in their proposal is inclusive of all costs, including equipment costs, to provide the services outlined in their proposal in response to this RFP. NOARC confirmed this in response to MDEQ indicating that a lack of detail in the costs provided in their proposal was identified as a weakness by the Evaluation Team that impacted their scores.

6. FC&E offered several options in their proposal for this work. If MDEQ was going to use the lowest costs proposal as a basis for judging all proposals then it should likewise use FC&E's lowest cost option in its scoring. In addition, we should be provided the opportunity to provide only our personnel costs only for comparison to NOARC's costs since that was all they provided. Our proposal cost points should be calculated on that basis and not our total costs since that was not provided by NOARC and others.

MDEQ Response: In accordance with Section VI. (C)(3) of the RFP, Price was evaluated based on the overall budget to provide the services described in the proposal. Price was calculated based on the total price/overall budget number of the *recommended method* proposed. No additional or alternative/optional methods were utilized in calculating price using the formula.

9. The necessity for using the original scoring or issuing a new RFP is further evidenced by MDEQ's recent extension and amendment to a similar RFP to account for this newly imposed DFA scoring formula. If it was not inherent to process and did not result in a fundamental change of the RFP in question, then why was there a need to alter an RFP for similar service that had not closed yet?

MDEQ Response: The inclusion of any formula for price in another subsequent active solicitation should not be an indicator of MDEQ's acceptance of this requirement for this RFP. A price formula was only included in this solicitation and a subsequent solicitation because of OPSCR and PPRB's interpretation and direction that such formula is required for evaluating proposals as made noticed to MDEQ only during the end of this RFP procurement process.

12. NOARC in many cases provides incomplete descriptions and costing. For instance, NOARC's costing does not adequately provide an overall budget and with their proposal indicating a 100-day time period we believe would indicate their overall budget would be significantly higher than the personnel-only costs they provided (i.e. that 100-days of sonar, vessel, positioning equipment and other costs should be expected in the overall budget).

MDEQ response: Please see MDEQ's response to No. 2 above.

Please note MDEQ is only responding to items that have been raised by FC&E that have not been presented to OPSCR/PPRB and/or addressed by MDEQ previously in coordination on this RFP. Please also see MDEQ's previous correspondence with OSPCR staff and PPRB regarding this RFP for MDEQ's position and actions taken regarding this RFP, which includes, but is not limited to, MDEQ's contract(s) submission packages for the RFP, MDEQ's letter to OSPCR dated April 23, 2021, the May 5, 2021 PPRB Meeting discussing MDEQ's positions in the April 23, 2021 letter and PPRB's direction of MDEQ on this RFP, and MDEQ's letter to OSPCR staff dated May 26, 2021.

If you have any further questions on this, please contact me, legal counsel for MDEQ on this matter via e-mail at Tbaum@mdeq.ms.gov, and copy Melanie Green at mgreen@mdeq.ms.gov, the procurement officer for this RFP.

Sincerely,

Tabatha A. Baum

Tabatha Baum
Senior Attorney
Mississippi Department of Environmental Quality

Cc: Richard Harrell, P.E. (FC&E Engineering)