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Protest Decision

Matter of: Pete's Cleaning Service
Case No.: 2017-126
Posting Date: January 19, 2017
Contracting Entity: SC Department of Transportation
Solicitation No.: 5400012316
Description: Janitorial Services – Oconee County

DIGEST

Protest of an award alleging that award posting date was changed to deny award to “Certified Small Minority Business” is dismissed. Pete's Cleaning Service's (Pete's) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

¹ The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	11/04/2016
Quotes Received	11/21/2016
Award Issued	11/29/2016
Protest Received	11/29/2016

ANALYSIS

The South Carolina Consolidated Procurement Code (Code) grants any actual bidder, offeror, contractor, or subcontractor the right to protest the award or intended award of a contract. S.C. Code Ann. §11-35-4210(1)(b). The South Carolina Department of Transportation (DOT) issued this solicitation² on November 4, 2016, for Janitorial Services to be performed at the SCDOT Oconee Maintenance Facility located at 150 Richland Road, Westminster, SC 29693. Quotes were received from Pete's Cleaning Company for \$111,000.00 and Stratus Building Solutions for \$61,630.00. (Bid Tabulation, Attachment 2) The cover page of the solicitation indicated an award posting date of November 22, 2016. On November 22, 2016, DOT issued an award extension indicating that award would be made on November 29, 2016. A Statement of Award with a total potential value of \$61,630.00 was published to Stratus Building Solutions on November 29, 2016. (Attachment 3)

Pete's protests:

Solicitation: 5400012316 was effective November 22, 2016, but was change to November 29, 2016 because I fill Pete's Cleaning Services Won the Award but because I'm Certified as a Small Minority Business the date was change so Stratus Building Solution get the Award.

² DOT published the solicitation as a Request for Quotations under Section 11-35-1550 of the Code, because it believed no bids would exceed \$50,000. Notwithstanding its title, the solicitation complies in every respect with Section 11-35-1520 of the Code: DOT published notice in SCBO on November 4, 2016, consistent with § 11-35-1520(3); it posted notice of the award and sent it to all bidders pursuant to § 11-35-1520(10); and both the solicitation and the award statement included the State's standard notice of protest rights, as required by § 11-35-1520(10). Nowhere in the solicitation document is there any reference to Section 11-35-1550 or other indication that the solicitation was being conducted as a small purchase. Because DOT complied with Section 11-35-1520, there is no reason to re-solicit or request ratification.

DOT complied fully with S.C. Code Ann. Reg 19-445.2090(B) when it issued and posted the notice extending the award date. Pete's protest of the award itself asserts only that, as a certified "Small Minority Business," it was entitled to a preference. The Code provides preferences for resident vendors, South Carolina and US end products. S.C. Code Ann. § 11-35-1524. There is no procurement preference for certified small minority businesses. Even if there were a preference for certified small minority businesses, the maximum advantage allowed is 10%. If Pete's bid were reduced by 10%, it would still be \$38,000 higher than the low bid. Award was made to the lowest responsive and responsible bidder.

Whether Pete's protest is of the extension pursuant to Section 11-35-4210(1)(a), or the award pursuant to Section 11-35-4210(1)(b), it does not identify a violation of the South Carolina Consolidated Procurement Code and fails to state a claim for which relief can be granted. Pete's protest is denied.

DECISION

For the reasons stated above, the protest of Pete's Cleaning Service is dismissed.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Eskew Peterson](#)
To: [Protest-MMO](#)
Cc: [Eskew Peterson](#)
Subject: CONTRACT AWARD
Date: Tuesday, November 29, 2016 3:13:41 PM

Chief Procurement Officer
Material Management Officer

I'm protesting the Award effective November 30. 2016.

Solicitation: 5400012316 was effective November 22, 2016, but was change to November 29, 2016 because I fill Pete's Cleaning Services Won the Award but because I'm Certified as a Small Minority Business the date was change so Stratus Building Solution get the Award.

Thanks
Eskew Peterson
Owner

Attachment 2

RFX Number	5400012316		PETES CLEANING COMPANY	STRATUS BUILDING SOLUTIONS
			5500048366	5500048367
Header Data				
Status		Submitted	Submitted	
Version Number	2		2	2
Net value			111,000.00 USD	61,630.00 USD
Currency		USD	USD	
1. The Submitter has read and understands the terms and conditions of this solicitation.		Yes, I have read and understand the terms and conditions.	Yes, I have read and understand the terms and conditions.	
2. The offer is in accordance with the terms and conditions of this solicitation.		Yes, I am in accordance with the terms and conditions.	Yes, I am in accordance with the terms and conditions.	
DO YOU ACKNOWLEDGE THAT IN-STATE PREFERENCE LAWS CHANGED IN 2009. PENALTIES APPLY FOR IMPROPER REQUESTS!! MORE INFO AT WWW.PROCUREMENT.SC.GOV /PREFERENCES. YOU ARE CAUTIONED TO CAREFULLY REVIEW THE STATUTE BEFORE CLAIMING ANY PREFERENCES.		Yes, I acknowledge that in-state preference laws changed.	Yes, I acknowledge that in-state preference laws changed.	
3 Janitorial Services - Bi-Weekly				
3 Net price	1 MON		1,600.00 USD	700 USD
3 Unit of Measurement		MON		MON
3 Price Unit			1	1
3 Product ID				
3 Quantity	60 MON		60 MON	60 MON
3 Net value			96,000.00 USD	42,000.00 USD
3 Acceptance Status				
Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Pr				
3 eferences		No	No	

<p>Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences</p>	No	No
<p>Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences</p>	No	No
<p>4 Janitorial Services-Semi-Annual</p>		
<p>4 Net price 1 EA</p>		1,500.00 USD 1,963.00 USD
<p>4 Unit of Measurement EA</p>		EA
<p>4 Price Unit</p>		1 1
<p>4 Product ID</p>		
<p>4 Quantity 10 EA</p>		10 EA 10 EA
<p>4 Net value</p>		15,000.00 USD 19,630.00 USD
<p>4 Acceptance Status</p>		
<p>Are you requesting the SC Resident Contractor Preference? See The SC Procurement Code, Section 11-35-1524(C) (1) (III) and Section IIB of this Solicitation for more Information. For a FAQ on these Preferences, Please See WWW.Procurement.SC.Gov/Pr</p>	No	No
<p>Are you requesting the SC Resident Subcontractor Preference-2%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences</p>	No	No

Are you requesting the SC Resident Subcontractor Preference-4%? See the SC Procurement Code, Section 11-35-1524(D) and IIB & VIIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc.gov/preferences

No

No

Attachment 3

STATE OF SOUTH CAROLINA
SCDOT PROCUREMENT OFFICE
955 PARK STREET ROOM 101
COLUMBIA SC 29201-3959

Statement of Award

Posting Date: November 29, 2016

Solicitation: 5400012316
Description: JANITORIAL SERVICES - OCONEE COUNTY
Agency: SC Department of Transportation

The State awards the contract(s) noted below. This document is the final Statement of Award, effective **08:00:00, November 30, 2016**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

- (a) by email to protest-mmo@mmo.sc.gov,
- (b) by facsimile at 803-737-0639, or
- (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400015017
Awarded To: STRATUS BUILDING SOLUTIONS (7000129054)
420 E PARK AVE SUITE 302
GREENVILLE SC 29601

Total Potential Value: \$ 61,630.00
Maximum Contract Period: November 30, 2016 through November 29, 2021

Item	Description	Unit Price	Total
00001	Janitorial Services - Bi-Weekly	\$ 700.00	\$ 42,000.00
00002	Janitorial Services-Semi-Annual	\$ 1,963.00	\$ 19,630.00

Procurement Officer
SCOTT DOBEREINER

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised November 2016)

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 111.1 of the 2016 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
1205 Pendleton Street, Suite 473, 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.