

HENRY MCMASTER, CHAIR  
GOVERNOR

CURTIS M. LOFTIS, JR.  
STATE TREASURER

RICHARD ECKSTROM, CPA  
COMPTROLLER GENERAL



**THE DIVISION OF PROCUREMENT SERVICES**

**DELBERT H. SINGLETON, JR.**  
DIVISION DIRECTOR  
(803) 734-8018

**MICHAEL B. SPICER**  
INFORMATION TECHNOLOGY MANAGEMENT OFFICER  
(803) 737-0600  
FAX: (803) 737-0639

HUGH K. LEATHERMAN, SR.  
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE  
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE  
EXECUTIVE DIRECTOR

## Written Determination

**Matter of:** Cancellation of Award to Wright For U Services

**Case No.:** 2017-128

**Posting Date:** February 15, 2017

**Contracting Entity:** South Carolina Department of Transportation

**Solicitation No.:** 5400010448

**Description:** Janitorial Services for Charleston DOT

This matter is before the Chief Procurement Officer for Information Technology<sup>1</sup> (CPO) pursuant to a request from the South Carolina Department of Transportation (DOT) [Ex. 1] under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), and Regulation 19-445.2085(C) to cancel an award to Wright For U Services to provide Janitorial Services for Charleston DOT, prior to performance due to inadequate or ambiguous specifications in the original solicitation discovered after award but prior to performance.

### BASIS FOR THE REQUEST

DOT issued solicitation 5400010448 on July 8, 2016 to provide Janitorial Services for Charleston DOT. On August 12, 2016, DOT posted an Intent to Award to Wright For U Services. [Exhibit 2] Wright For U Services was the incumbent contractor providing these

---

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

services. The solicitation described cleaning functions to be performed, the required level of cleanliness and required the successful contractor to submit a schedule to establish the frequency necessary to maintain the defined level of cleanliness and the DOT facilities.

DOT held a pre-performance conference with Wright For U Services on August 31, 2016, during which among other things, the past performance of the contractor including that the floors were not kept in good condition<sup>2</sup>, the schedule for cleaning, and the time in which to submit a cleaning schedule for approval by the procurement officer and the Resident Maintenance Engineer. The schedule was to be submitted by September 7, 2016. Wright For U Services did not submit the service schedule until September 9, 2016. The schedule for stripping, waxing and buffing of floors was less frequent than the previous contract and the schedule was unacceptable. The failure to include an acceptable cleaning schedule in the original solicitation created an ambiguous situation where the contractor's low bid was based on a schedule the State viewed as inadequate for proper performance. DOT requested cancellation after award but prior to performance so that it can reissue the solicitation with an acceptable service schedule upon which bidders can compete.

DHEC requests cancellation of the award prior to performance in accordance with Regulation 19-445.2085(C)

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (8) For other reasons, cancellation is clearly in the best interest of the State.

---

<sup>2</sup> Section 11-35-1810(1) requires that the: Responsibility of the bidder or offeror shall be ascertained for each contract let by the State based upon full disclosure to the procurement officer concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.

Raising the issue of a bidder's past performance after awarding a subsequent contract raises two questions. Why was the bidder's past performance not addressed as a performance issue during the previous contract? The second question is if past performance was unacceptable, why was the bidder considered a responsible bidder for the subsequent award?

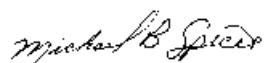
Written Determination, page 3

Case No. 2017-128

February 14, 2017

## **DETERMINATION**

For the reasons stated above, the award to Wright For U Services is cancelled under Regulation 19-445.2085(C).



---

Michael B. Spicer  
Chief Procurement Officer for Information  
Technology

## Exhibit 1



South Carolina  
Department of Transportation  
955 Park Street, Room 101  
Columbia, South Carolina 29201

Procurement Director  
CPO for Commodities & Service Contracts  
Norma J. Hall, FNIGP, CPPO, CPPB, CPM  
(803) 737-1483 • Fax (803) 737-2046

November 29, 2016

Mr. John St. C. White, PE  
Chief Procurement Officer  
1201 Main St.  
Suite 600  
Columbia, SC 29201

RE: Termination of Contract 4400013765 prior to performance

Mr. White,

Per SC Procurement Regulation 19-445.2085(C), I am writing to request cancellation of award made to Wright For U Services (4400013765) as a result of solicitation number 5400010448 (Janitorial Services for Charleston DOT). After award, but prior to performance, a pre-performance conference was held August 31, 2016 during which, among other things, the past performance of the contractor and the schedule for cleaning were discussed, as well as the time in which to submit a cleaning schedule to both me and the Resident Maintenance Engineer. The schedule was to be submitted by September 7, 2016. The schedule was not submitted until September 9 and then the schedule did not address the spray wax and buffing of floors nor the stripping and waxing of floors in the same time frame as the previous year's schedule (both attached). One of the items brought up during the pre-performance conference was that the floors were not kept in good condition. The new schedule clearly shows that the tasks would be performed less frequently rather than at the same frequency or more so.

For these reasons our preference is to cancel the award and resolicit with a defined schedule and time frames of services to be performed.

Sincerely,

*Emmett I. Kirwan*

Emmett I. Kirwan  
SCDOT Contracts Manager

Cc: Norma Hall

Attachments - 2

**From:** [White, John](#)  
**To:** [Spicer, Michael](#)  
**Subject:** FW: DOT Request to Cancel Prior to Performance  
**Date:** Monday, December 05, 2016 9:13:56 AM  
**Attachments:** image001.png  
RE Request to Cancel Prior to Performance.msg  
Request to Cancel Prior to Performance.msq

---

Mike,

Can you handle this for me?

---

**From:** Kirwan, Emmett I. [mailto:[KirwanEI@scdot.org](mailto:KirwanEI@scdot.org)]  
**Sent:** Wednesday, November 30, 2016 8:15 AM  
**To:** White, John  
**Cc:** Hall, Norma J.  
**Subject:** RE: Request to Cancel Prior to Performance

John,

Yes, I should have cited (C)(1) not (C)(8).

Emmett I Kirwan  
SCDOT Procurement Manager  
955 Park St, Columbia, SC 29201 | 803-737-0676 | Fax 803-737-2046

---

**From:** White, John [<mailto:jswwhite@mmo.sc.gov>]  
**Sent:** Tuesday, November 29, 2016 5:25 PM  
**To:** Kirwan, Emmett I.  
**Cc:** Hall, Norma J.  
**Subject:** RE: Request to Cancel Prior to Performance

**\*\*\* This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. \*\*\***

Perhaps I am missing something but I do not follow why a cancellation under paragraph (C)(8) is appropriate. Your stated concern is they provided a schedule that does not meet up with a desire expressed in a meeting not the solicitation documents. I have only glanced at the solicitation but based off what I am seeing and what you have said, I do not understand how this solicitation could be bid because there is no mandated schedule. Since your request states that you intend to "resolicit with a defined schedule and time frames of services," aren't you really asking for cancellation under 19-445.2085(C)(1)?

---

**From:** Kirwan, Emmett I. [mailto:[KirwanEI@scdot.org](mailto:KirwanEI@scdot.org)]  
**Sent:** Tuesday, November 29, 2016 2:56 PM  
**To:** White, John  
**Cc:** Hall, Norma J.

**Subject:** RE : Request to Cancel Prior to Performance

John,

The schedule was not in the solicitation. The 2016 schedule is the one that is not labeled and has the handwritten building names on each page. The 2015 schedule is the one page immediately following the letter.

We are relying on paragraph (C) section (8).

There was not a schedule in the solicitation itself, however during the pre-performance conference it was made clear to Wright For U, who had the contract that had just ended, that the floor maintenance had been less than satisfactory. Taking the step to then schedule less floor maintenance is not in our best interest and we do need to make clear the time frame(s) that work must be completed.

Emmett I Kirwan  
SCDOT Procurement Manager  
955 Park St, Columbia, SC 29201 | 803-737-0676 | Fax 803-737-2046

---

**From:** White, John [<mailto:jswwhite@mmo.sc.gov>]  
**Sent:** Tuesday, November 29, 2016 2:49 PM  
**To:** Kirwan, Emmett I.  
**Cc:** Hall, Norma J.  
**Subject:** RE : Request to Cancel Prior to Performance

\*\*\* This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. \*\*\*

Emmett,

I did not see two schedules, just a 2015 schedule. Am I just missing it? It is not clear to me that this is a request for cancellation prior to performance since you cite as a basis failure to comply with a requirement of the specifications. Which of the eight grounds for cancellation are you relying on? Also, did the solicitation have a performance schedule, e.g. did it specify how often spray wax and buffing of floors should occur etc.?



John St. C. White | Materials Management Officer and State Engineer  
Division of Procurement Services | SC State Fiscal Accountability Authority  
1201 Main Street, Suite 600 | Columbia, SC 29201 | Office: (803) 737-0768 |  
[jswwhite@mmo.sc.gov](mailto:jswwhite@mmo.sc.gov)

---

**From:** Kirwan, Emmett I. [<mailto:KirwanEI@scdot.org>]  
**Sent:** Tuesday, November 29, 2016 12:56 PM  
**To:** White, John  
**Cc:** Hall, Norma J.  
**Subject:** Request to Cancel Prior to Performance

Mr. White,

Please see the attached request per 19-445.2085 (C).

Emmett I Kirwan  
SCDOT Procurement Manager  
955 Park St, Columbia, SC 29201 | 803-737-0676 | Fax 803-737-2046

## **Exhibit 2**

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

### **Intent to Award**

Posting Date: August 12, 2016

**Solicitation:** **5400010448**

**Description:** **Janitorial Services for Charleston DOT**

**Agency:** **SC Department of Transportation**

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **08:00:00, August 23, 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](mailto: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:** 4400013765

**Awarded To:** WRIGHT FOR U SERVICES LLC (7000180916)  
P.O. Box 40335  
NORTH CHARLESTON SC 29423

**Total Potential Value:** \$ 153,000.00

**Maximum Contract Period:** August 23, 2016 through August 22, 2021

<b>Item</b>	<b>Description</b>	<b>Unit Price</b>	<b>Total</b>
00001	District 6, HQ Building A, 5 days a week	\$ 725.00	\$ 43,500.00
00002	District 6, IT Building C, 5 days a week	\$ 250.00	\$ 15,000.00
00003	Chas. Maint. Complex, 5 days a week	\$ 525.00	\$ 31,500.00
00004	Hwy Ops Ctr Building H, 3 days a week	\$ 225.00	\$ 13,500.00
00005	Traffic Signal three days a week	\$ 225.00	\$ 13,500.00
00006	Permit, Safety, Restroom 3 days a week	\$ 225.00	\$ 13,500.00
00007	Warehouse Restroom, 5 days a week	\$ 125.00	\$ 7,500.00
00008	Construction Office Bldg E, 3 days a week	\$ 250.00	\$ 15,000.00

**Procurement Officer**  
EMMETT KIRWAN

## **STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Written Determinations Appeal Notice (Revised November 2016)*

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:  
(b) requests for review of other *written determinations, decisions, policies, and procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) *See generally Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc., Case Nos. 1996-4 & 1996-5, Protest of Charleston County School District, Case No. 1985-5, Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

---

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.**