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EXECUTIVE DIRECTOR

THE DIVISION OF PROCUREMENT SERVICES

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

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
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Protest Decision

Matter of: B & C Associates, Inc.

Case No.: 2018-115

Posting Date: September 19, 2017

Contracting Entity: South Carolina Department of Mental Health

Solicitation No.: 5400013763

Description: Janitorial Service Columbia Area DMH

DIGEST

Protest that preferences were improperly applied is granted. B & C Associates' (BC) 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

The South Carolina Department of Mental Health (DMH) issued this procurement to establish an annual contract for janitorial services at its Columbia Area Mental Health Clinic on June 29, 2017. The solicitation alerted bidders that preferences authorized under Section 11-35-1524 were applicable to this solicitation. Section 11-35-1524 gives bidders who are resident in South Carolina or are bidding products made, manufactured or grown in South Carolina or the United States an advantage during the evaluation of bid price. BC submitted the lowest of five bids with CMB Services, Inc. (CMB) providing the second lowest bid. After application of preferences, CMB was declared the lowest responsible bidder. A statement of award was posted to CMB on August 8, 2017. BC protested the award on August 9, 2017, alleging that the preferences were applied incorrectly. DMH reviewed the protest allegations, agreed that the preferences were improperly applied, and requested cancellation of the award by the CPO under Regulation 19-445.2085(C). [Attachment 2]

<i>Event</i>	<i>Date</i>
Solicitation Issued	06/29/2017
Amendment 1 Issued	07/18/2017
Amendment 2 Issued	07/25/2017
Statement of Award Issued	08/08/2017
Protest Received at DMH	08/09/2017
Protest Received by CPO	08/09/2017

ANALYSIS

This Invitation for Bids alerted bidders that the Resident Contractor Preference (RCP) and both the 2% and 4% Resident Subcontractor Preferences (RSCP) were applicable to this solicitation.

PREFERENCES - RESIDENT CONTRACTOR PREFERENCE (SEP 2009)

To qualify for the RCP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business or performance of a particular service which has been operated as such by the bidder for at least one year before the bid opening and during that year the place has been staffed for at least fifty weeks by at least two employees for at least thirty five hours a week each. In addition, you must, at the time you submit your bid, directly employ, or have a documented commitment with, individuals domiciled in South Carolina

that will perform services expressly required by the solicitation and your total direct labor cost for those individuals to provide those services must exceed fifty percent of your total bid price. [11-35-1524(C)(1)(iii)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that will perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, and documentation of the your labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action). [02-2B113A-1]

[Solicitation, Page 11]

PREFERENCES - RESIDENT SUBCONTRACTOR PREFERENCE (SEP 2009)

To qualify for this preference, You must meet the following requirements. (1) You must -- at the time you submit your bid -- have a documented commitment from a single proposed first tier subcontractor to perform some portion of the services expressly required by the solicitation. (2) The subcontractor -- at the time you submit your bid -- must directly employ, or have a documented commitment with, individuals domiciled in South Carolina that will perform services expressly required by the solicitation and the total direct labor cost to the subcontractor for those individuals to provide those services exceeds, as applicable, either twenty percent for a 2% preference or forty percent of bidder's total bid price for a 4% preference. (3) You must identify the subcontractor that will perform the work, the work the subcontractor is to perform, and your factual basis for concluding that the subcontractor's work constitutes the required percentage of the work to be performed in the procurement. [11-35-1524(D)] You can stack this preference, i.e., earn another 2% or 4% preference for each additional qualifying subcontractor, but the preference is capped. [11-35-1524(D)(4), (E)(7)] Upon request by the procurement officer, you must identify the persons domiciled in South Carolina that are to perform the services involved in the procurement upon which you rely in qualifying for the preference, the services those individuals are to perform, the employer of those persons, your relationship with the employer, and documentation of the subcontractor's labor cost for each person identified. If requested, your failure to provide this information promptly will be grounds to deny the preference (and, potentially, for other enforcement action). **YOU WILL NOT RECEIVE THE PREFERENCE UNLESS YOU SPECIFY WHETHER YOUR ARE CLAIMING THE 2% OR 4% PREFERENCE AND YOU PROVIDE THE INFORMATION REQUIRED BY ITEM (3) ABOVE.** [02-2B113B-1]

[Solicitation, Page 12]

The bidding schedule, as published in the solicitation, provided spaces for bidders to claim the Resident Vendor Preference, which was not applicable to this solicitation, the RCP and the two percent RSCP, but not the four percent RSCP.

The RCP provides for the reduction of a resident contractor' bid price by seven percent for evaluation purposes. The RSCP provides for the reduction of a bidder's price by two or four percent for evaluation purposes if it is utilizing subcontractors domiciled in South Carolina to perform the work.

BC bid \$49,200.00 for the 60 month contract and claimed the Resident Contractor Preference (7%) which should have resulted in an evaluated price of \$45,756.00. [Attachment 3] CMB bid \$51,530.40 and claimed the Resident Vendor Preference (7%) which was not applicable to this solicitation, and the Resident Contractor Preference (7%). Correctly applying only the RCP would have resulted in an evaluated price of \$47,923.27. [Attachment 4] BC should have been declared the lowest bidder.

However, in evaluating the bids the procurement officer reduced BC's bid by 2% for a resident subcontractor preference which reduced BC's \$49,200.00 bid to \$48,216.00 for evaluation purposes. The procurement officer then reduced CMB's \$51,530.40 bid by 10 % (6% for the resident contractor preference and an additional 4% for two resident subcontract preferences (2%)) to \$46,377.36. [Attachment 5] DMH requested the CPO cancel the award pursuant to S.C. Code Ann. Reg. 19-445.2085(C)(7), and return the IFB to the agency for re-solicitation. [Attachment 4] However, the bid tabulation plainly indicates that, had DMH applied preferences in accordance with the instructions to bidders (and Section 11-35-1524), BC was the low bidder. If the agency determines its bid is responsive and that BC is a responsible contractor, it should be awarded the contract.

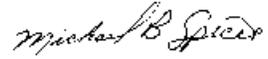
DECISION

The procurement preferences were improperly applied. The protest of B & C Associates, Inc. is granted. The award to CMB Services, Inc. is cancelled and the procurement is remanded to the

Protest Decision, page 5
Case No. 2018-115
September 19, 2017

South Carolina Department of Mental Health for award in accordance with the South Carolina Consolidated Procurement Code.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

"Your Properties Best Friend"



B & C ASSOCIATES

3201 Colonial Drive, Columbia, South Carolina 29203
Telephone: (803) 252-7582 1-800-634-2556 Fax: (803) 748-7112

August 9, 2017

SC Department of Mental Health
SCDMH Procurement Office
2414 Bull St. Room 106
Columbia SC 29201

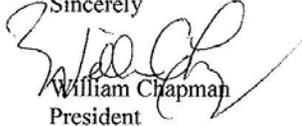
SUBJECT: PROTEST OF Solicitation No. 5400013763

I am hereby protesting the subject award for the following reason:

I am currently the contractor for the subject contract. I recently bid \$820.00 for this contract which was awarded on August 9, 2017. This solicitation was awarded to another contractor in the amount of \$858.84, which is higher.

I understand that the SC Vendor Preference was applied in this award. Please note that I was unaware that this was the primary determining factor as the confusion lies in being a "VENDOR" versus a "CONTACTOR" selling a product or service versus a "Contractor" providing an employee staff service. I selected the Contractor Preference due to that reason rather than the Vendor Preference.

Please note also according to the solicitation page 16. Award Criteria, award will be made to the lowest responsible and responsive bidder, which B&C is responsible since we are currently providing the service, and our bid was the lowest.

Sincerely

William Chapman
President



STATE OF SOUTH CAROLINA
SC DEPT. OF MENTAL HEALTH
SCDMH PROCUREMENT OFFICE
2414 BULL STREET, ROOM 201
COLUMBIA SC 29201

Statement of Award

Posting Date: August 08, 2017

Solicitation: 5400013763
Description: JANITORIAL SERVICES COLUMBIA AREA MHC
Agency: SCDMH

The State awards the contract(s) noted below. This document is the final Statement of Award, effective **August 9, 2017 at 8:00 AM**. 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.

RESIDENT VENDOR PREFERENCE (AS DEFINED IN SECTION 11-35-1524) HAS BEEN APPLIED IN THIS AWARD.

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]

Contract Number: 4400016860
Awarded To: CMB SERVICES INC (7000246825)
1225 LAUREL ST SUITE 409
COLUMBIA SC 29201

Total Potential Value: \$ 51,530.40

Maximum Contract Period: September 01, 2017 through August 31, 2022

Item	Description	Unit Price Per Month	Total
00001	Janitorial Services 90 Brighton Hill Rd., Columbia, SC	\$ 858.84	\$ 51,530.40

Procurement Officer
JEAN BEANE

Attachment 2

Stephen Pullie

From: Stephen Pullie
Sent: Wednesday, August 09, 2017 1:33 PM
To: Spicer, Michael
Cc: Brandalyn Brewer
Subject: 5400013763 SCDMH Protest
Attachments: 2503_001.pdf

Mr. Spicer,

With the referenced solicitation, SCDMH sought to compete janitorial services for its' Columbia Area Mental Health Clinic. On August 8, 2017, SCDMH posted an award (attached) in the amount of \$51,530.40 to CMS Services Inc. The following day we received a protest from B&C Associates (attached) which points out confusion brought upon by the offered preferences in the solicitation. The award in the case was due to application of the offered preferences. This award has been put on administrative hold pending review.

After reviewing the solicitation document, it appears that SCDMH made an administrative error in the preferences the vendor community was offered in this solicitation. This error could have had an impact on the award of this contract. For this reason, SCDMH requests that you exercise your authority to cancel the award to CMS Services as allowed under the SC Consolidated Procurement Code regulation 19-445-2085(7). If cancelled, we will complete a new solicitation for these services which will include the correct preference options.

Please contact me with any questions at 803-238-3497.

Thank you,

Stephen Pullie
SCDMH Purchasing Director

Attachment 3

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

Line Number	Quantity	Unit of Measure	Unit Price Per Month	Extended Price
0001	60	Month	\$820.00	\$49,200
Product Catg.: 95863 - Janitorial Management Services				
Item Description: Janitorial Management Services				
Tendering Text: Furnish all labor, materials, equipment and transportation necessary to conduct janitorial services for Columbia Area Mental Health Center Young Adult Program, @90 Brighton Hill Road Columbia, S.C. 29223 Following the specifications in this solicitation.				
Internal Item Number: 1				
Question	Mandatory / Optional	Multiple Responses Accepted?	Response	
Are you requesting the SC Resident Vendor Preference? See the SC Procurement Code, Section 11-35-1524(C)(1)(I)&(II) and Section IIB of this solicitation for more information. For a FAQ on these preferences, please see www.procurement.sc/preferences	Mandatory	No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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/Preferences	Mandatory	No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
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	Mandatory	No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Attachment 4

VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

BIDDING SCHEDULE (NOV 2007)

Line Number	Quantity	Unit of Measure	Unit Price Per Month	Extended Price
0001	60	Month	\$ 858.84	\$51,530.40
Product Catg.: 95863 - Janitorial Management Services				
Item Description: Janitorial Management Services				
Tendering Text: Furnish all labor, materials, equipment and transportation necessary to conduct janitorial services for Columbia Area Mental Health Center Young Adult Program, @90 Brighton Hill Road Columbia, S.C. 29223 Following the specifications in this solicitation.				
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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	Mandatory	No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2017)

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 367, 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.