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Protest Decision

Matter of: Dashlink, Inc.

Case No.: 2019-201

Posting Date: August 14, 2018

Contracting Entity: State Fiscal Accountability Authority

Solicitation No.: 5400015948

Description: Idera Software, Maintenance, & Support Statewide Contract

DIGEST

Untimely protest of successful bidder's responsibility is denied. Dashlink's letter of protest is included by reference. [Attachment 1]

AUTHORITY

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

BACKGROUND

Event	Date
Solicitation Issued	07/03/2018
Intent to Award Issued	07/31/2018
Protest Received	08/11/2018

ANALYSIS

The State Fiscal Accountability Authority (SFAA) issued this Invitation for Bids to establish a state term contract for Idera Software, Maintenance, & Support on July 3, 2018. An Intent to Award was posted to CWPS on July 31, 2018. The CPO received an email from Mr. Rick Gibson, Business Development Manager with Dashlink on August 11, 2018, stating:

I wanted to follow up on the protest sent by Bob Dash as he received a message undeliverable after sending to protest-itmo@itmo.sc.gov this week. Attached is the protest submitted by Mr Dash last Wednesday.

[Attachment 2]

A check of the State's email system confirmed that Mr. Dash's email was not received.¹

Section 11-35-4210(1)(b) states:

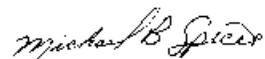
Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement *officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award*, whichever is earlier, is posted in accordance with this code;

The letter of protest was not received by the CPO until August 11, 2018, eleven days after the intent to award was posted. The statute clearly requires that a protest must be filed with the CPO within 10 days of the posting of the award or intent to award. The protest of Dashlink, Inc. was not received by the CPO within the statutory time limit.

DECISION

The protest of Dashlink, Inc. is denied.

For the Information Technology Management Office



Michael B. Spicer
Chief Procurement Officer

¹ The letter attached to the email was dated August 8, 2018, alleges that CWPS was not registered with the South Carolina Secretary of State and apparently not authorized to conduct business in the State. CWPS is registered with the Secretary of State as Computer Word Processing Systems, Inc. and is authorized to conduct business in the State.

Attachment 1



Protest of Award

8 August 2018

Bob Dash
Dashlink, Inc
9111 Lady St
Columbia, SC 29201

Chief Procurement Officer,

Dashlink wished to protest the award of State contract 4400019277 on the grounds that the awardee, CWPS, did not meet the requirements set forth in the Invitation to bid. Specifically

Section V. Qualifications paragraph (1) (a). Offeror must submit a copy of their Certificate of Authority, Incorporation, or Existence issued by the South Carolina Secretary of State and a letter on the Bidder's letterhead certifying that they are authorized to operate contractually and sell within the State of South Carolina.

Dashlink has no information as to what the awardee provided under this paragraph, but the South Carolina Secretary of State has no business filing for a company titled CWPS. Without being registered with the South Carolina Secretary of State the awardee could not have provided a valid Certificate of Authority, Incorporation, or Existence issued by the South Carolina Secretary of State.

A handwritten signature in blue ink that reads 'Bob Dash'.

Bob Dash
Sales Executive

Attachment 2

From: [Rick Gibson](#)
To: [Hutto, Kristen](#)
Cc: [itmo_protest](#)
Subject: Protest of award
Date: Saturday, August 11, 2018 11:24:18 AM
Attachments: [Award protest.pdf](#)

Kristen;

I wanted to follow up on the protest sent by Bob Dash as he received a message undeliverable after sending to protest-itmo@itmo.sc.gov this week. Attached is the protest submitted by Mr Dash last Wednesday.

Rick Gibson
Business Development Manager
Dashlink, Inc
254-681-1614

*This electronic message may contain privileged, attorney work-product or confidential information.
Any use or further distribution of the information provided in this message by an unintended recipient is strictly prohibited.
If you are not the intended recipient of this email, please delete it from your system and advise the sender immediately.*

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2018)

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 2018 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.