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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

Protest Decision

Matter of: Jean's Bus Service, Inc.

Case No.: 2020-102

Posting Date: August 28, 2019

Contracting Entity: Lander University

Solicitation No.: IFB-LA-434-07-24-2019 Re-Bid

Description: Chartered Bus Services 2019-2020-Re-Bid

DIGEST

Protest of award is dismissed for lack of standing. Jean's Bus Services' letter of protest is included by reference. (Attachment 1)

AUTHORITY

The Chief Procurement Officer¹ (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.

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

BACKGROUND

Solicitation IFB-LA-430-07-11-2019 Issued	06/27/2019
Delay of Award Issued	07/11/2019
No Award Issued	07/16/2019
Re-solicitation IFB-LA-434-07-24-2019 issued	07/16/2019
Bids Received	07/24/2019
Intent to Award Posted	07/24/2019
Protest Received	07/29/2019

Lander University issued an Invitation for Bids for chartered bus services on June 27, 2019.

Jean's responded to original solicitation IFB-LA-430-07-11-2019. After reviewing bids, Lander determined to cancel the solicitation and revise the specifications. It issued a new solicitation on July 16, 2019. Lander received one bid from Ionosphere Tours, Inc. An Intent to Award was posted to Ionosphere Tours on July 24, 2019. Jean's Bus Service protested the award on July 29, 2019. Lander responded to the protest on August 8, 2019. (Attachment 2)

ANALYSIS

In the letter of protest, Jean's Bus Service states:

Jean's Bus Service has submitted a bid on Solicitation IFB-LA-434-07-24-2019 as required by the bid package and on time.

In Lander's response to the protest it states:

We did not receive a bid from your company for IFB-LA-434-07-24-2019.

Jean's acknowledged that it submitted a response to solicitation IFB-LA-430-07-11-2019 but did not submit a response to solicitation IFB-LA-434-07-24-2019, because it was allegedly advised by Lander not to bother submitting a response as there was a vendor performance complaint in its file at Lander. (Attachment 3) Lander, however, denies that it instructed Jean's not to submit a bid. According to the procurement officer, "[a]t no time did I tell her not to bid or that Jean's would not be awarded." (Attachment 2) Instead, the procurement officer told Jean's it should address the vendor performance complaint if it decided to respond to the revised solicitation

Regardless of what was said between Jean's and the procurement officer, if Jean's wanted an opportunity to win the contract, it should have bid. But, having failed to submit a bid, it cannot

now claim that it detrimentally relied on the procurement officer's statement, particularly when the procurement officer lacked authority to suggest that Jean's not bid. *See Appeal by Technology Solutions, Inc.*, Panel Case No. 2001-3 ("a governmental body cannot be estopped 'by the unauthorized or erroneous conduct or statements of its officers or agents which have been relied on by a third party to his detriment.'" (quoting [*South Carolina Coastal Council v. Vogel*, 292 S.C. 449, 357 S.E.2d 187 \(Ct. App. 1987\)](#))).

Section 11-35-4210(1)(b) limits the right to protest to an actual bidder, offeror, contractor or subcontractor the right to protest the intended award of a contract.

Any actual bidder, offeror contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall notify the appropriate chief procurement officer in writing on its intent to protest within seven business days of the date that award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code. Any actual bidder, offeror, contractor or subcontractor who is aggrieved in connection with the intended award or award of a contract and has timely notified the appropriate chief procurement officer of its intent to protest, may protest to the appropriate chief procurement officer in the manner stated in subsection (2) within fifteen days of the date award or notification of intent to award, whichever is earlier, is posted and sent in accordance with this code;

Jean's did not submit a bid in response to solicitation IFB-LA-434-07-24-2019 and was not an actual bidder, offeror, contractor or subcontractor. Consequently, Jean's lacks standing to protest this award.

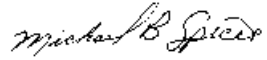
To the extent Jean's protest challenges Lander's cancellation of the first solicitation, it is denied. First, Jean's was not aggrieved by the cancellation. There is no claim that pricing was exposed, and Lander issued a new IFB simultaneously with the cancellation. Second, the first solicitation was properly cancelled. Under S.C. Code Ann. Reg. 19-445.2065B, the procurement officer can cancel a solicitation prior to award for a number of reasons. They include both reasons Lander cited: specifications have been revised, Reg. 19-445.2065B(1)(b), and bid prices were unreasonable, Reg. 19-445.2065B(1)(f). Finally, despite Jean's claims, nothing prevented it from submitting a bid to the second IFB.

Protest Decision, page 4
Case No. 2020-102
August 28, 2019

DECISION

For the reasons stated above, the protest of Jean's Bus Service, Inc. is dismissed for lack of standing.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

July 29, 2019

John W. Cauley Jr.
Jean's Bus Service, Inc.
207 Furman Hall Road
Greenville, SC 29609

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Subject : Protest Solicitation IFB-LA-430-07-11-2019; IFB-LA-430-07-11-2019 No Award; IFB-LA-434-07-24-2019 Re-Bid; IFB-LA-434-07-24-2019 Award

The purpose of this letter is to Protest the inappropriate way that the Lander University Procurement handled this process and to call in question the reasoning behind the re-bid process.

A series of events have incurred that have drawn question from us (Jean's Bus Service Inc.) on the reasoning behind the need for a rebid.

Jean's Bus Service has submitted a bid on Solicitation IFB-LA-434-07-24-2019 as required by the bid package and on time. As of 7/16/2019 a notice of no award was found after a search of the Lander University web site for procurement (the web page note in Award & Amendments <http://www.lander.edu/procurement> is incorrect to find Solicitations or Awards and will take you to an Error 404 page not found warning). We were curious of the reasoning: Price is considered excessive and will be re-solicited with revised specifications. On the next day I found the re-bid package with the revised specifications, the addition of the two new Men and Women's Lacrosse teams were added. The previous solicitation had given a web page to see the fall sport schedule (the only ones that are available at this time) to be used to inform when and where the games are scheduled to be played but not the itinerary of the number of days or time of travel. We questioned Kent Atkins of this lack of information and was told just to use the schedule that the price could be adjusted according to the actual itinerary when itineraries are finalized. We were informed in the re-bid solicitation to do the same for the new Lacrosse teams. There are no schedules posted for these teams at the time and date of this letter. So our question to Brian Reese the athletic Director, Kent Adkins Assistant Athletic director and Lois Amick Procurement Officer was what to do with a non-existing schedules and what does this do to change the bid from the original bid package? A call was made to all three on Friday 6/26/19 the last day for question but no one was present to answer a call. Monday morning another call by Office manager Jo Lynn Lott was made to Lois Amick in procurement. This time Jo Lynn made contact and ask the question of how to use the non-existing schedule to bid. The answer shocked her. "Well to be honest, you should not bother to re-bid, it will not be accepted" was the answer. The question then was WHY? It was explained that sixteen month prior a teacher had written a complaint letter to Procurement on a trip to Orlando. Jean's Bus Service never received a notice from Lander University Procurement of any such letter. Jo Lynn asked for a copy to be sent to her. The trip in the letter called attention to missing a

breakfast meal because of the driver's refusal to move the bus before his eight hours of off duty time had been completed. In all the proposal's I have seen the "STAUTORY RESPOSIBILITIES: Rules and Regulations of the ICC, DOT and State Regulatorywill be compiled with at all times" seem to be paramount. Also in the same section: the Offer shall be given a written warning for the first material deficiency..... This never happened.

From our point of view, Lander University Procurement, seeing our bid (ILB-LA-430-07-11-2019) seen that our company Jean's Bus Service, Inc. by virtue of our lower mileage bid of 3.45 per mile compared to our competitor's bid of 3.75 per mile should have been awarded the contract. Needing a way out they used the re-bid to exclude Jean's bus Service, Inc. without due process. We were never allowed to answer the letter or even knew of its existence. After sixteen month the records of this trip are no longer available per the record keeping requirement of the FMCSA. To properly review is now impossible.

My insight into this matter is the rebid process was created to remove Jean's Bus Service from the process for a complaint letter that was never communicated to Jean's Bus Service, Inc. that it even existed. The letter should not and cannot be used against Jean's bus Service, Inc. in the fact that Lander University did not use their own procedure for this matter.

The Relief for this Protest is that the NO Award letter (ILB-LA-430-07-11-2019), the re-bid (ILB-LA-434-07-24-2019) And Award Letter (ILB-LA-434-07-24-2019) All be rescinded and Jean's Bus Service should be awarded the contract per solicitation ILB- LA-430-07-11-2019.

Thank You for your time in this matter

John W. Cauley Jr.
Administration
Jean's Bus Service, Inc.

Attachment 2

August 8, 2019

John W. Cauley Jr.
Jean's Bus Service, Inc.
207 Furman Hall Road
Greenville, SC 29609

Subject: Protest Solicitation for **Chartered Bus Services for Lander University**
2019-2020 IFB-LA-430-07-11-2019; IFB-LA-430-07-11-2019 No Award; IFB-LA-434-
07-24-2019 Re-Bid; IFB-LA-434-07-24-2019 Award

cc: Michael B. Spicer, Chief Procurement Officer for the State of South Carolina;
Kent Atkins, Assistant Athletics Director for Compliance/Internal Operations,
Lander University; Brian Reese, Director of Athletics, Lander University; Mary
McDaniel, Director of Procurement & Retail Services, Lander University

Background:

Solicitation IFB-LA-430-07-11-2019 Issued: 6/27/2019

Delay of Award Issued: 07/11/2019

No Award Issued: 07/16/2019

Re-solicitation IFB-LA-434-37-24-2019 issued: 7/16/2019

Intent to Award Issued: 7/24/2019

Protest Received by CPO: ?

Protest Received from CPO by Procurement Officer: 8/7/2019

Dear Mr. Cauley:

I have just received a copy of your letter of protest from our Chief
Procurement Officer on August 7, 2019 and a copy from our Athletics Director

and our Bus Services Co-coordinator, Mr. Atkins. In review of the bid calendars, your protest was not filed within the statutory time limit for the solicitation that you responded to. We did not receive a bid from your company for IFB-LA-434-07-24-2019. I will, however, address the issues of your letter. I have re-examined every step of the bids for Charter Bus Services, and my review has concluded that our procedures for obtaining these services are proper and according to the SC Procurement Code.

I have also re-examined your bid response which was submitted by JoLynn Lott, Office Manager. The first minor error that we found was that the SC Registered Vendor number submitted on the bid does not check out. There is a Jean's Bus registered with another number. The next major error that we found was that the price line for overnight charge was left blank on the bid schedule page. This was something that we could not assume. See Page 9: RESPONSIVENESS/IMPROPER OFFERS (JUN 2015)

On page 7 of the Invitation to Bid, please note the clause: DUTY TO INQUIRE. We opened the next bid submitted by Ionoshere Tours, Inc. The overnight price submitted was \$850 per night and the price per mile and minimum day rates had increased from what we had paid the prior year. I consulted with the end user, Kent Atkins as soon as possible and he decided to re-bid to see if we could get better pricing and more response. We realized that we

did not emphasize the addition of the Men's and Women's Lacrosse travel. We felt that this made the bid more lucrative. We also set a fixed price of \$600 or under on the per overnight. This re-bid avoided declaring Jean's Bus Service unresponsive, and Lander University expected a response from Jean's in the re-bid.

We issued the re-bid and I did not receive any written questions. On page 8 please note the clause: QUESTIONS FROM OFFERORS, "Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing". Lander University was working a summer schedule at that time and that is the reason it was Monday before Ms. Lott could reach us by phone, which was not the proper way to submit questions. An e-mail to me was all that was required. I knew that there was a Vendor Performance complaint in the Lander file so I addressed that to Ms. Lott when she called in her question on the Lacrosse schedule. I told her that I would send it to her and that she should not spend as much time on the Lacrosse schedules as she should to responding to the Vendor Performance so that we would have a response to consider before making an award. At no time did I tell her not to bid or that Jean's would not be awarded. I sent her the Vendor complaint that afternoon and a day or so later I did receive a response from Jean Cauley, which I added to the vendor performance file.

The bid opening day came and at the time of opening we opened with only one response from Ionosphere. My witness and I were surprised that no re-bid was submitted by Jean's Bus Services, or that no other companies had submitted.

In looking back the last seven years we have spent \$111,741.85 with your company. The records of the vendor performance incident, the non-responsive bidding procedure errors, or the failure to meet protest deadlines do not have to be submitted to the State Office if you decide to withdraw your protest.

In following the protest procedure, in the letter below, I must ask the State for a dismissal of your protest.

Sincerely,



Lois Amick, CPPB
Procurement Officer
Lander University
864-388-8899

Attachment 3

From: [Johnny](#)
To: [Spicer, Michael](#)
Subject: RE: [External] Lander University Protest Response letter-Chartered Bus
Date: Thursday, August 8, 2019 4:20:19 PM

That is correct. The bid had already be completed. No changes. If there had been a Lacrosse schedule (There still is not one posted at the web site given) we would have taken that in consideration. But there is no data to work with. That is why we called. This made no sense to us. We did not send with no chance of being considered.

John Cauley Jr.

From: Spicer, Michael [mailto:mospicer@mmo.sc.gov]
Sent: Thursday, August 8, 2019 4:08 PM
To: Johnny <johnny_jeans@charter.net>; 'Lois Amick' <lamick@lander.edu>
Cc: 'Mary McDaniel' <mmcdaniel@lander.edu>; 'Kent Atkins' <katkins@lander.edu>; 'Brian P Reese' <brees@lander.edu>; Grier, Manton <mgrier@ogc.sc.gov>; Robertson, Dixon <d Robertson@ogc.sc.gov>
Subject: RE: [External] Lander University Protest Response letter-Chartered Bus

So do I correctly understand that because your office manager was told "Not to Bother" that Jean's did not submit a response to IFB-LA-434-07-24-2019?

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.