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## Protest Decision

**Matter of:** US&S, Inc

**Case No.:** 2020-103

**Posting Date:** September 19, 2019

**Contracting Entity:** Greenville Technical College

**Solicitation No.:** GTC 19-07-263IFB

**Description:** Janitorial Services- Center for Manufacturing Innovation (CMI)

### DIGEST

Protest that low bid does not represent a fair and reasonable cost is denied. The protest of US&S is included by reference. (Attachment 1)

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> (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.

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

## BACKGROUND

Solicitation Issued	07/23/2019
Amendment 1 Issued	08/02/2019
Amendment 2 Issued	08/05/2019
Intent to Award Posted	08/09/2019
Protest Received	08/12/2019
Last Day to Amend Protest	08/26/2019

Greenville Technical College issued this Invitation for Bids to acquire janitorial services for the Center for Manufacturing Innovation (CMI). US&S is the incumbent contractor. Eleven bids were received, and an Intent to Award was posted to DeWhit Facility Services LLC as the lowest responsive and responsible bidder on August 9, 2019. US&S' protest was received by the CPO on August 12, 2019.

## ANALYSIS

US&S protests that DeWhit will not be able to provide an appropriate level of manpower, supplies, equipment, and/or supervision to ensure safety and quality service at the price bid:

In order to provide an appropriate level of manpower, supplies, equipment, and/or supervision to ensure safety and quality service, we would expect the awarded offeror to be within a standard deviation of the mean - especially considering the number of bidders that fell within a normal range. The intended awardee's price does not allow for sufficient materials support or oversight beyond a minimum required labor presence.... With a normal distribution, as the case is here, there is confidence that the low bid is an outlier and either non-responsive or undervalued.

Whether the awardee can perform the contract at the price offered is a matter of responsibility. The Procurement Code requires that the responsibility of the apparent successful bidder be determined prior to making an award. S.C. Code Ann. § 11-35-1810(1). An inquiry into responsibility considers an offeror's ability to perform the contract requirements and "may be substantiated by past performance." S.C. Code Ann. § 11-35-1410(6). Under the Procurement Code, a procurement officer's finding of responsibility is a matter of discretion that should not be overturned absent proof that it is "clearly erroneous, arbitrary, capricious, or contrary to law." S.C. Code Ann. § 11-35-2410(A); Appeal of *CollegeSource, Inc.*, Panel Case No. 2008-4. As the party challenging the responsibility determination, US&S must demonstrate that the

responsibility determination lacks a reasonable or rational basis. *Appeal by Value Options*, Panel Case No. 2001-7 (citing *Robert E. Derecktor of Rhode Island v. Goldschmidt*, 516 F. Supp. 1085 (D.R.I. 1981)). A claim that the low bidder will not be able to perform because its price is more than one deviation from the mean of the other bidders is speculative and does not demonstrate by a preponderance of the evidence that DeWhit is unable to perform the contract and consequently that the determination of responsibility lacks a reasonable or rational basis. Speculation about post-award performance is a matter of contract administration and not a proper challenge to either responsiveness or responsibility. *See, e.g., Appeal by Catamaran*, Panel Case No. 2015-2; *Appeal by Otis Elevator Co.*, Panel Case. No. 2017-1.

## **DECISION**

For the reasons stated above, the protest of US&S is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer



Corporate Office  
 1200 Woodruff Rd., Suite C-6  
 Greenville, SC 29607  
 Phone: 864-233-8035  
 Fax: 864-527-0117  
[usands.com](http://usands.com)

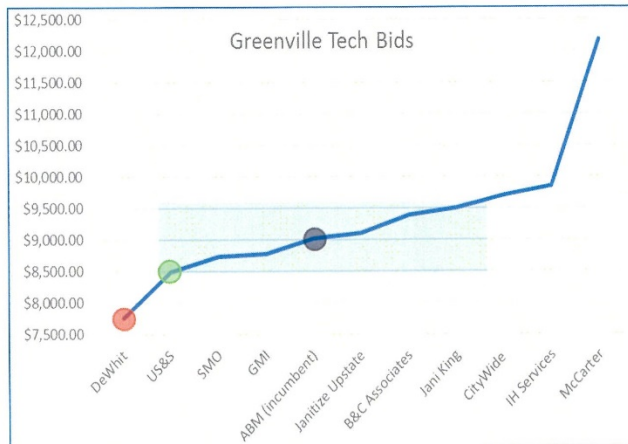
August 12, 2019

Mr. Mike Spicer  
 Chief Procurement Officer, Materials Management Office  
 1201 Main Street, Suite 600, Columbia, SC 29201

**Subject: Solicitation GTC 19-07-263IFB Intent to Award – Protest for Price Reasonableness**

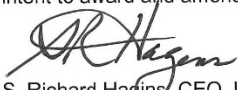
Based on the submitted offers for janitorial services at CMI, disclosed information on incumbent pricing and performance, and our expertise in the required scope of services and labor market, US&S believes that the intended awardee does not represent a fair and reasonable cost. In order to provide an appropriate level of manpower, supplies, equipment, and/or supervision to ensure safety and quality service, we would expect the awarded offeror to be within a standard deviation of the mean – especially considering the number of bidders that fell within a normal range. The intended awardee's price does not allow for sufficient materials support or oversight beyond a minimum required labor presence. In support of that labor, are any federal funds being used to pay for services contracted under this solicitation?

Company	Price
DeWhit	\$ 7,760.50
<b>US&amp;S</b>	<b>\$ 8,494.00</b>
SMO	\$ 8,736.00
GMI	\$ 8,772.80
<b>ABM (incumbent)</b>	<b>\$ 9,022.50</b>
Janitize Upstate	\$ 9,100.00
B&C Associates	\$ 9,388.00
Jani King	\$ 9,498.00
CityWide	\$ 9,709.00
IH Services	\$ 9,840.42
McCarter	\$12,169.39
Average (all bids):	\$ 9,317.33
Standard Deviation:	\$ 1,064.69
Minimum Appropriate Bid:	\$ 8,252.64
Avg Without Highest Bid:	\$ 9,032.12
STD Without High Bid:	\$ 593.42
Minimum Appropriate Bid:	\$ 8,438.71



With a normal distribution, as the case is here, there is confidence that the low bid is an outlier and either non-responsive or undervalued. Removing the high (out-of-bounds) response results in a strong P-Value of 0.818 for the rest of the group, further reinforcing the deviation of the intended awardee's unbalanced bid. Additionally, the incumbent contractor's proposal nearly matches the corrected mean value. Their knowledge of both the technical and implicit requirements of the contract properly anchors this distribution for your confidence in a responsible selection. Therefore, the State should reject this award and determine it unreasonable as to price per R.19-445.2070.

The lowest acceptable, qualified, and responsive bid belongs to US&S. Please reconsider the current intent to award and amend it to US&S, Inc. as the awardee. Thank you very much.

  
 S. Richard Hagins, CEO, US&S



**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised June 2019)*

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.

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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>

FILING FEE: Pursuant to Proviso 111.1 of the 2019 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**

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\_\_\_\_\_  
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: \_\_\_\_\_

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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.**