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THE DIVISION OF PROCUREMENT SERVICES  
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MATERIALS MANAGEMENT OFFICER  
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## Protest Decision

**Matter of:** Southern Painting & Maintenance Specialists, LLC  
**File No.:** 2024-107  
**Posting Date:** August 31, 2023  
**Contracting Entity:** Department of Administration  
**Solicitation No.:** 5400025742  
**Description:** State House Lamp Post Repainting

### DIGEST

The Chief Procurement Officer for Construction (CPOC) dismisses for lack of standing where protestant was not an actual bidder. Southern Painting & Maintenance Specialists, LLC's (Southern) is attached as Exhibit A.

### AUTHORITY

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

### BACKGROUND

The facts pertinent to this decision are:

- On August 4, 2023, the Department of Administration (Department) advertised for bids to clean and repaint the lamp posts on the State House Grounds.

- By the deadline for receipt of bids, the Department received eight bids. [Exhibit B]
- Pack's Associated Construction (PAC), a South Carolina licensed General Contractor with a subclassification of Nonstructural Renovation among others, submitted the low bid.<sup>1</sup>
- On August 24, 2023, the Department posted a notice of award of a contract to PAC. [Exhibit C] The total potential value of the contract is \$20,296.
- On August 24, 2023, Southern protested.

## DISCUSSION

The South Carolina Code of Laws Section 11-35-4210(1)(b) grants actual bidders a right to protest award of contracts. However, Section 11-35-4210(1)(d) limits this right stating:

The rights and remedies granted by subsection (1) and Section 11 35 4410(1)(b) **are not available** for contracts with an actual or potential value of up to fifty thousand dollars.

[emphasis supplied]

Southern's protest is to the award of a contract with a total potential value of \$20,296. Per Section 11-35-4210(1)(d), this award is not protestable, and the CPO lacks jurisdiction to consider a protest of this award.<sup>2</sup>

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<sup>1</sup> For PAC's license, see the Department of Labor, Licensing and Regulation's licensee lookup website.

<sup>2</sup> Even if the award were protestable, Southern's protest would fail. Southern makes unsupported allegations that PAC or its subcontractor, if any, is or may be in violation of various state and federal laws. Southern asks the CPO to conduct an investigation to determine if any of these allegations are true. However, the protestant bears the burden of proving upon a preponderance of the evidence presented by the protestant the truth of its allegations. Southern did not provide any evidence with its protest to support its allegations.

To the extent Southern has evidence that PAC is in violation of any of the state and federal laws, Southern may report those violations to the appropriate authorities charged with enforcing those laws. For example, Southern may report a violation of the Contractor's licensing law to the Department of Labor, Licensing and Regulation.

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Case No. 2024-107  
August 31, 2023

**DECISION**

For the reasons stated above, the protest of Southern is dismissed.



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John St. C. White  
Chief Procurement Officer

Columbia, South Carolina

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised July 2023)*

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 2023 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.**



**SOUTHERN PAINTING &  
MAINTENANCE SPECIALISTS, LLC.**

August 24, 2023

Matthew Hall  
State of South Carolina  
Purchasing Office  
1200 Senate Street, Suite 408  
Columbia, SC 29201

RE: State House Lamp Post Repainting – **NOTICE OF FORMAL PROTEST**

Dear Matthew:

This letter represents a formal protest of the bid results - Solicitation 5400025742.

**Project awards being protested:**

- Item 00001 Clean and Paint - \$1,200.00
- Item 00002 Clean and Paint - \$19,096.00

**Summary:**

The recent bid results raised many questions and concerns about the legality of the bid. Being that this work is taxpayer-funded, we are requesting a full evaluation and determination of the allegations below.

Southern Painting can provide all documentation (if requested) necessary for evaluation in our allegations below. If Packs Associated Construction cannot produce this information, it would be a clear determination of his illegal advantage over Southern Painting & the other responsible bidders regarding this Solicitation. We would all be at a disadvantage due to ensuring we maintain a legal and compliant workforce in the state of South Carolina.

**Allegations:**

*Subcontractor indicated does not meet the Contractor Licensing requirements*

- 1) Based on the information provided, it does not indicate if Packs Associated Construction plans to use their own labor or subcontract the work. If a subcontractor is indicated, please provide the subcontractor's South Carolina General Contractor's License number as required by the South Carolina Code of



## **SOUTHERN PAINTING & MAINTENANCE SPECIALISTS, LLC.**

Laws. If they cannot provide this information, their bid must be deemed non-responsive and the intent to reward rescinded.

*Inability to prove legal workforce will be utilized*

As required by the SC Code of Laws, Packs Associated Construction and his subcontractor (workforce if applicable) are required to be in full compliance of both federal and state laws.

- 1) Inadequate “legal” manpower to complete the scope. If Packs Associated Construction plans to use in-house labor or subcontract labor, we request the following for legal manpower evaluation, as required in the SC Code of Laws.
- 2) Evaluation on previous 3-years South Carolina State Income tax submission and payments for both Packs Associated Construction employees and his subcontractor(s) (including any sub-tier 1099 subcontractors). If state income tax was not paid by either Packs Associated or his subcontractor in the state of South Carolina for work performed over the previous years, this would be a direct violation of South Carolina state law.
- 3) Evaluation on previous 3-year Federal payroll taxes payments for both Packs Associated Construction employees and subcontractor(s) (including any sub-tier 1099 subcontractors). If Packs Associated or their subcontractors cannot provide this information, that means they are paying “employees/labor” as 1099 subcontractors. We would then request an evaluation of the books regarding federal payroll tax payments for those 1099 sub-tier subcontractors. At some point, they must be able to produce documentation to show that an “W2 employee” is being paid according to federal and state labor guidelines. If they cannot produce this information, Packs Associated Construction’s workforce is in violation of federal and state labor law to accept and perform work in the State of South Carolina.
- 4) Evaluation of Packs Associated Constructions NCCI Workers Compensation report as well as his subcontractor(s) (including any sub-tier 1099 subcontractors). They should have separate reports for each company if they are in current legal status as required by state law. If either Packs Associated Construction and/or his subcontractor(s) cannot produce this report, they are not legally



## **SOUTHERN PAINTING & MAINTENANCE SPECIALISTS, LLC.**

submitting their payroll information to their workers compensation companies & therefore in direct violation of South Carolina State Employment Laws.

- 5) E-Verify documentation confirmation of Packs Associated Construction's workforce (subcontractor or employee). By Federal and South Carolina State Law mandate SB20, this is a requirement to E-Verify all employees. This ensures proper legal work documentation has been submitted and confirmed by the federal controlling agency. Again, if they only can produce a limited number of these verification documents or can't provide any at all, they are in direct violation of federal and state laws. This would immediately disqualify Packs Associated Construction's proposal.
- 6) Evaluation of payroll records, for either in-house employees or subcontractor labor, showing employee deductions being allocated for federal payroll tax and federal/state income taxes. This could also be shown by requesting W-2 records. Failure to produce this documentation would be in direct violation of by state and federal law requirements. This would disqualify Packs Associated Construction's proposal from performing public work in the State of South Carolina.
- 7) Evaluation of payroll records showing employees, and/or employees of subcontractors, are being paid overtime based off federal and state labor law requirements. Failure to produce this documentation proving overtime was paid would be in direct violation of by state and federal law requirements. This would disqualify Packs Associated Construction's proposal from performing public work in the State of South Carolina.
- 8) Evaluation of documentation showing state unemployment taxes have been paid to the required state from both Packs Associated Construction (if any) and his subcontractors (or sub-tier subcontractors). If Packs and Packs subcontractors cannot produce records of paid unemployment taxes, they are in direct violation of both state and federal employment law. In addition, the amount of the payments will also tell us how large the "legal" workforce is to perform the work in question in the state of South Carolina.
- 9) If 1099 records are provided for evaluation, this would raise more questions about the sub-tier subcontractors that are being utilized.





## **SOUTHERN PAINTING & MAINTENANCE SPECIALISTS, LLC.**

These same questions would then need to be raised and evaluation needed regarding the sub-tier contractors as outlined in items 1-8 above.

- 10) Packs Associated Construction and his subcontractor(s) must comply with applicable requirements of Title 8, Chapter 14, of the South Carolina Code of Laws and agrees to provide any information to verify this upon request. A full evaluation of Packs Associated Construction and his subcontractor(s) (if applicable) being in compliance of this code law is requested.
- 11) A valid COI must be verified for Packs Associated Construction and subcontractor(s) as required in the SC Code of Laws. If his subcontractor does not have insurance, Packs Associated Construction would need to provide documentation and payment of the previous 3-years of workers compensation and general liability cost for his uninsured subcontractor employees. If a subcontractor does not have an insurance policy, it falls on the prime contractor to report that payroll paid to his insurance company. The prime contractor is then responsible for the full cost of insurance as it relates to the payroll. Failure to do so is a direct violation of South Carolina law. Should the subcontractor have insurance, their annual insurance audit will be requested to show the amount of W-2 legal employees reported to workers compensation.

Evaluation of all information above should provide more clarity. If the information cannot be produced or is incomplete in any way, Packs Associated Construction should be immediately disqualified from performing work in the Award in question and the intent to award rescinded.

We look forward to hearing your response to this matter soon.

Should you have any immediate questions please feel free to reach me directly at (864)-735-2237.

Sincerely,

*Bob Maffett*

Bob Maffett  
President

908 Laurens Road • Greenville, SC 29607  
864-232-4010 • Fax 864-233-6867

# Exhibit B

## OFFICIAL COMPETITIVE SEALED BID TABULATION

South Carolina Department of Administration

SOLICITATION NUMBER:	5400025742
SOLICITATION DESCRIPTION:	STATE HOUSE LAMP POST REPAINTING
QUOTE DEADLINE DATE: QUOTE DEADLINE TIME:	08/15/2023 2:00PM

BIDDER NAME	TOTAL BID
PACKS ASSOCIATED CONSTRUCTION	\$20,296.00
TIMMONS PAINTING LLC	\$30,499.78
MARK ULLMAN CONSTRUCTION LLC	\$42,900.00
CORLEY ENTERPRISE INC OF SC	\$45,360.00
PSG CONCRETE & EXCAVATION LLC	\$51,475.50
J D GASKINS CONSTRUCTION INC	\$62,000.00
MECK MECHANICAL LLC	\$128,560.26
SOUTHERN PAINTING & MAINTENANCE	\$153,900.00

I hereby certify this bid tabulation is a true and accurate representation.

Matthew Hall      Matthew Hall      8/15/2023  
Print Name                      Signature                      Date

Coyce Nobles      Coyce Nobles      8/15/2023  
Print Name                      Signature                      Date

STATE OF SOUTH CAROLINA  
DEPARTMENT OF ADMINISTRATION  
PURCHASING OFFICE  
1200 SENATE STREET, SUITE 408  
COLUMBIA SC 29201-3200

**Statement of Award**

Posting Date: August 24, 2023

**Solicitation:** 5400025742  
**Description:** STATE HOUSE LAMP POST REPAINTING  
**Agency:** Department of Administration

The State awards the contract(s) noted below. This document is the final Statement of Award, effective **17:00:00, August 24, 2023.** 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.

**Contract Number:** 4400032767  
**Awarded To:** PACKS ASSOCIATED CONSTRUCTION (7000005731)  
113 SALUSBURY LANE  
COLUMBIA SC 29229

**Total Potential Value:** \$ 20,296.00  
**Maximum Contract Period:** August 25, 2023 through August 24, 2024

Item	Description	Unit Price	Total
00001	Clean and paint	\$ 150.00	\$ 1,200.00
00002	Clean and paint	\$ 124.00	\$ 19,096.00

**Procurement Officer**  
MATTHEW HALL