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Protest Decision

Matter of: HES Facilities Management

File No.: 2026-109

Posting Date: October 9, 2025

Contracting Entity: State Fiscal Accountability Authority, Division of Procurement Services

Solicitation No.: 5400027944

Description: Facilities Management Services Campus Wide – Winthrop University

DIGEST

The Chief Procurement Officer (CPO) grants the protest of HES Facilities Management (HES). HES's protest is attached as Exhibit A.

AUTHORITY

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

BACKGROUND

On March 24, 2025, the State Fiscal Accountability Authority, Division of Procurement Services (DPS) on behalf of Winthrop University (Winthrop) issued Solicitation number 5400027944 requesting proposals to provide custodial, grounds, and facility maintenance services for Winthrop's campus and facilities. DPS subsequently issued four Amendments which primarily answered vendor questions.

By the deadline for receipt of proposals, DPS received seven proposals, including one from HES and one from Southeast Services Corporation (SSC). After reviewing and evaluating proposals, the Evaluation Panel determined SSC's proposal to be the most advantageous to the State. On August 27,

2025, DPS posted a notice of the State's intent to award a contract to SSC. On September 11, 2025, after timely filing a notice of intent to protest, HES filed its protest with the CPO.

DISCUSSION

HES's protest challenges the responsiveness of SSC's proposal. Specifically, the solicitation states:

III. SCOPE OF WORK/SPECIFICATIONS

The Contractor will provide a high level of custodial, grounds and facility maintenance services for the Winthrop University campus and facilities. The Contractor shall ensure that the staff, students, and community users of these Facilities have a safe, healthy, functional, and compliant environment that makes a positive contribution to the educational processes, business processes and community uses conducted within those facilities.

The Contractor shall perform all duties and repairs necessary to properly manage and maintain campus facilities according to nationally recognized standards.

17. The following Service Levels must be maintained:

d. Maintenance, custodial and grounds services shall be performed at the APPA 2 level, or better.¹

[solicitation p. 15]

B. Custodial Services

Generally, Custodial Services include all janitorial services necessary to clean, sanitize and maintain in appealing manner all spaces in Winthrop's facilities as described in Attachment 1/Exhibit B at a minimum of APPA Level 2.

[solicitation p. 17]

The subsequent amendments to the solicitation answer vendor questions concerning current APPA levels Winthrop adheres to, the answers to these questions do not change these requirements.

[Amendment 1, Q&A 79 and Amendment 2, Q&A 9]

HES alleges that SSC's proposal is not responsive or responsible to the requirement to perform services to APPA level 2 as evidenced by its pricing, staffing plan, and certain language in both SSC's Technical and Financial Proposals.

¹ APPA stands for Association of Physical Plant Administrators.

HES first alleges that “SSC and others’ submitted prices are irresponsible and cannot be performed to required standards within the RFP’s stated scope and scale.” HES further alleges this makes SSC’s proposal nonresponsive. The CPO disagrees. HES’s allegation is nothing more than a claim that SSC’s pricing is unreasonably low, and that SSC cannot perform the contract for that pricing. Such allegations do not state a claim. *Appeal by Catamaran, LLC, Panel Case No. 201502; Ferguson Surveying and Engineering*, 8-244570.2, 1991 WL 243193, at *1 (Comp. Gen. Nov. 8, 1991) (“A protester's claim that another offeror has submitted an unreasonably low price or even that the price is below the cost of performance - ***is not a valid basis for protest***. A bidder or offeror, in its business judgment, properly may decide to submit a price that is extremely low.”) (cited by *Catamaran*).

HES next alleges that “[t]he custodial staffing plan as submitted by SSC in their technical proposal falls short of the requirement in the RFP.” HES observes that a requirement of the solicitation is that the awarded vendor perform all “[m]aintenance, custodial and grounds services ... at the APPA 2 level, or better.”² (Solicitation p. 15, Section 17(d) and p. 17, Section B). HES alleges that SSC cannot meet this requirement with its proposed staffing plan. SSC responds:

SSC does not measure staffing adequacy by headcount alone. Our model incorporates efficient scheduling, advanced equipment, rigorous associate training, and continuous quality assurance programs. SSC has a long record of delivering APPA Level 2 services at institutions of comparable size and complexity using similar staffing designs.

[Exhibit B]

As the protestant, HES bears the burden of proof, but other than a bald allegation it presents no evidence that SSC cannot perform to APPA level 2 standards with the staffing and equipment plan SSC submitted.

HES next alleges that “SSC’s proposed maintenance pricing fails to meet the requirements of the tiered services requirement on page 21 of the RFP.” The solicitation states:

Pricing submitted for evaluation should include all costs of labor, materials and supplies, consumable supplies, cleaning supplies, vehicle costs, and general operating costs for maintenance and repairs up to \$2000/\$3000/\$4000 thresholds.

[emphasis and highlighting in the original]

² APPA stands for Association of Physical Plant Administrators.

SSC submitted identical pricing for each tiered threshold. HES asserts that pricing “would necessarily increase or decrease appropriately based on threshold” and because SSC’s pricing does not, is “neither responsible nor responsive.”

While one does expect to see tiered pricing with the tiered thresholds, nothing in the solicitation actually requires offerors to provide tiered pricing.³ Only when the tiered pricing creates an illusion of advantageous pricing rather than the reality, commonly called unbalanced bidding, is it a problem. There is nothing in SSC’s pricing structure for the tiered thresholds that indicates that it is unbalanced to the State’s disadvantage. SSC’s flat pricing is the second-lowest pricing for the first two tiers and the lowest for the third tier.

HES final allegation is essentially that both SSC’s Technical Proposal and Financial Proposal take exception to solicitations requirements regarding APPA service levels. In this regard, SSC states:

SSC asserts that they will provide alternative pricing options in their technical proposal while being “very mindful and respectful of the budget” (p 119 of SSC Technical Proposal) and further stated on the first page of their Financial Proposal, “the current budget does not correspond with the desired service level”. By their own words SSC submitted a proposal driven solely by your posted budget and fully cognizant that their proposed plan would not meet the required standards set forth by the RFP.

HES’s allegation is further supported by language in SSC’s Financial Proposal that HES has not seen.

HES received a redacted version of SSC’s Financial Proposal through a document production request per Section 11-35-410. HES questioned the redaction of parts of this document and asked for an unredacted version. This redacted language expands further on the language HES quotes in support of its allegation stating:

SSC is proposing a gradual path of improvement instead of a large spend increase in Year 1. For example, our approach will move Winthrop from APPA 4 in Year 1 steadily to APPA 2. A phased approach to service level enhancement will allow Winthrop to realize operational improvements while maintaining budget discipline. Focusing on foundational upgrades - such as proactive labor planning, data-driven forecasting and scalable procurement - SSC aims to achieve improvements in efficiency without causing immediate cost increases. This strategy not only protects against inflationary pressures but also aligns capital investments with long-term institutional goals, ensuring each step forward is sustainable and financially sound.

³ The other offerors provided tiered pricing, some of them modest. For instance, the offeror providing the highest pricing for all tiers provided identical pricing for the first two tiers.

This aspect of SSC's proposal varies from the requirements of the solicitation which does not allow for a phased approach to providing APPA 2 service levels.⁴ A responsive proposal is one "which conforms in all **material** aspects to the ... request for proposals." S.C. Code Ann. §11-35-1410(9) [emphasis supplied]. The State may wave an "immaterial variation from the exact requirements" of the solicitation. S.C. Code Ann. § 11-35-1520(13) and Reg. 19-445.2095(E). However, the State may not waive a material variation. Performing maintenance, custodial and grounds services at the APPA 2 level, or better is a material requirement of the solicitation which cannot be waived.

DECISION

For the reasons stated above, the CPO grants HES's protest, vacates the award to SSC, and remands this matter back to DPS to proceed in accordance with the Procurement Code.

The President of Winthrop has consulted with the CPO setting forth facts and circumstances showing that proceeding with this procurement without delay is necessary to protect the interest of the state. [Exhibit C] The CPO finds those facts and circumstances persuasive, agrees that proceeding with this procurement without delay is necessary to protect the interest of the state, and hereby lifts the automatic stay per Section 11-35-4510(7) to allow DPS to proceed in accordance with the Procurement Code.



John St. C. White
Chief Procurement Officer

Columbia, South Carolina

⁴ Moreover, this language is ambiguous. It is not clear if all of year one service levels will be at APPA 4 levels and SSC will transition to APPA 2 at some undefined date after year one or in the alternative, it will transition from APPA 4 to APPA 2 gradually during year one. The differences can have a significant impact on price.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised July 2025)

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>

FILING FEE: Pursuant to Proviso 111.1 of the 2025 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 SubscribeITs, 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.

Ms. Jennifer Abney
Procurement Officer
SFAA, Division of Procurement Services
PO Box 101103
Columbia, SC 29201-3734

Via e-mail: jabney@mmo.sc.gov; protest-mmo@mmo.state.sc.us

September 11, 2025

RE: Solicitation 5400027944 FACILITIES MGT SVCS. CAMPUS WIDE – Written Protest

Dear Ms. Abney and Evaluation Committee:

Thank you for considering HES Facilities Management (“HES”) for the provision of Facility Management Services at Winthrop University. We were disappointed to learn that we were not the selected contractor, and even more disappointed when we were made aware of the reasons HES was not awarded the contract. Accordingly, to follow our Notice of Intent to Protest submitted pursuant to §11-35-4210 of the South Carolina Procurement Code on August 28, 2025, this letter constitutes HES’s formal Written Protest of the proposed award to Southeast Service Corporation (“SSC”).

Upon review of the proposal submitted by SSC, we believe that the intent to award the resulting contract is in violation of the specifications and requirements of the subject RFP and its associated Questions and Answers. It appears that the decision to make the award to SSC was determined by a majority scoring percentage predicated on a proposed price that SSC designed specifically to target your posted budget. In their eagerness to price to your budget, SSC and others’ submitted prices are irresponsible and cannot be performed to required standards within the RFP’s stated scope and scale.

HES contends that SSC’s proposed price was focused entirely on your published budget and not on the required services outlined in the RFP. Your RFP states that an offer is nonresponsive if it is inconsistent with or does not agree to the solicitation’s material requirements (RFP, page 9). It seems clear that the focus and ‘material requirements’ are service based as the RFP instructed that pricing was not to be included in the technical proposal (RFP, page 20, Section IV). The methodology employed by SSC in their financial proposal is not in keeping with the unambiguous requirements and instructions of the RFP which set forth that price was to be determined based upon meeting the requested *scope of work and service levels*.

The custodial staffing plan as submitted by SSC in their technical proposal falls short of the requirement in the RFP that all “Maintenance, custodial and grounds services shall be performed at the APPA 2 level, or better” (p 5, RFP, section 17(d); also see p 17, RFP, section (B)). SSC proposed a total of forty-seven (47) full-time employees. Based on the amount of work, it is not reasonably feasible that the minimal

staffing SSC has proposed would meet the recommended cleanable square footage per worker industry standard to comply with the APPA level 2 requirement.

Further, SSC's proposed maintenance pricing fails to meet the requirements of the tiered services requirement on page 21 of the RFP. Offerors were required to submit comprehensive pricing for "maintenance and repairs up to \$2000/\$3000/\$4000 thresholds" (p 21, RFP). The Financial Worksheet submitted by SSC has identical pricing for each threshold. Inherently, pricing would necessarily increase or decrease appropriately based on the threshold. As such, SSC's pricing is neither responsible nor responsive to the RFP.

If the lack of dynamics in the tiered pricing and the non-compliant proposed staffing plan were not indicative of targeting pricing by SSC, in their technical proposal, SSC asserts that they will provide alternative pricing options in their technical proposal while being "very mindful and respectful of the budget" (p 119 of SSC Technical Proposal) and further stated on the first page of their Financial Proposal, "the current budget does not correspond with the desired service level". By their own words SSC submitted a proposal driven solely by your posted budget and fully cognizant that their proposed plan would not meet the required standards set forth by the RFP.

HES respectfully challenges the decision to award the contract resulting from the above-mentioned solicitation to SSC for the reasons set forth above. We greatly appreciate your cooperation in answering many of our inquiries thus far, however, to date, HES still has yet to receive responses to questions that were posed to the State and we respectfully reserve the right to supplement our protest upon the receipt of any such response from the State.

Thank you for your attention to this matter.

Kindest Regards,

A handwritten signature in blue ink, appearing to read "Nicole L. Rothstein".

Nicole L. Rothstein, Esq.

In House Counsel
HES Facilities, LLC
865.263.1905 x 4012
nicole.rothstein@hes.com

Sent Via Email
Ms. Jennifer Abney
Procurement Officer
SFAA, Division of Procurement Services
PO Box 101103
Columbia, SC 29201-3734

Re: Solicitation 5400027944 – **Facilities Management Services, Campus Wide – Response to HES Protest**

Dear Ms. Abney:

Thank you for the opportunity to respond to the written protest submitted by HES Facilities Management (“HES”). SSC Services for Education (“SSC”) approaches every partnership with the professionalism and thoroughness it deserves, and Winthrop University’s Facilities Solicitation was no exception. We respectfully submit this response to affirm that the award was properly made and that SSC’s proposal fully complied with the requirements of the RFP.

HES contends that SSC’s pricing was based solely on Winthrop’s shared budget. That assertion is incorrect. Our proposal was developed after a comprehensive review of the RFP’s requirements, informed by decades of experience in higher education facilities management, and supported by proven internal modeling processes. SSC’s pricing reflects a responsible and sustainable program designed to meet APPA Level 2 standards or better, while providing the State and Winthrop with long-term value. Responsible stewardship of public funds requires a solution that balances cost with performance, and that is precisely what SSC delivered.

HES further claims that SSC’s staffing plan cannot reasonably achieve the required service level. This overlooks the strength of our approach. SSC does not measure staffing adequacy by headcount alone. Our model incorporates efficient scheduling, advanced equipment, rigorous associate training, and continuous quality assurance programs. SSC has a long record of delivering APPA Level 2 services at institutions of comparable size and complexity using similar staffing designs. The Evaluation Committee reviewed and scored our plan accordingly, recognizing that SSC has the resources and experience to deliver on its commitments.

HES also argues that our tiered maintenance pricing was non-compliant because identical rates were provided across thresholds. The RFP did not require incremental differences between the \$2,000, \$3,000, and \$4,000 tiers; it required comprehensive and transparent pricing, which SSC provided. Our pricing gives Winthrop predictability and clarity, and the Evaluation Committee correctly determined it to be responsive.

Finally, HES points to SSC’s candid acknowledgment that the “current budget does not correspond with the desired service level.” This was not an admission of noncompliance. It was a demonstration of transparency. SSC has always been clear that we are prepared to deliver the full scope of services required by the RFP within the pricing proposed. At the same time, we openly communicated that should Winthrop wish to expand services beyond the baseline scope, we stand ready to collaborate on solutions. Far from undermining our proposal, this candor reinforces our commitment to partnership and accountability.

The South Carolina Procurement Code requires award to the responsible offeror whose proposal is most advantageous to the State. The Evaluation Committee carefully applied those standards, and SSC’s proposal achieved the highest composite score. The protest raised by HES does not identify any actual noncompliance with the RFP or the Procurement Code; it simply reflects disagreement with the Evaluation Committee’s judgment. Such disagreement is not a valid basis to overturn a lawful award.

For these reasons, SSC respectfully submits that HES's protest should be denied. Our proposal was responsive, responsible, and fully compliant, and the award decision was accurate and appropriate. We look forward to partnering with Winthrop University to deliver a seamless transition and the high-quality facilities management program the University expects and deserves.

Sincerely,



Daniel Bourdeau
Chief Financial Officer
SSC Services for Education



Office of the President

September 26, 2025

Kimber Craig, Chief Procurement Officer and Director of Agency Sourcing
Division of Procurement Services
South Carolina State Fiscal Accountability Authority
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Director Craig:

I am writing today to request, per Section 11-35-4210 Paragraph 7 of the S.C. State Procurement Code, that the State of South Carolina lift the Stay of Procurement During Protests regarding Solicitation Number 54000247944, Facilities Management Services Campus Wide, for the following reasons which are mission critical for Winthrop University.

This is a contract for facilities management services for Winthrop University, a public institution in Rock Hill serving more than 5,200 students. Founded in 1886, Winthrop is an institution on the rise, with a new strategic plan, increasing enrollment, cutting-edge academic programs, the second highest fundraising year in its history, and renewed emphasis on partnerships with the community. We have a high percentage of South Carolina residents as our students and faculty/staff, and the institution is situated in a fast-growing, dynamic region of the State.

At the time the RFP commenced in March 2025, 20 out of 85 facilities positions were vacant, and Winthrop had been dealing with a continuous vacancy rate of approximately 25 percent for an extended period. In fact, the continuous vacancy rate was a key reason for seeking an outsourced solution to the University's facilities needs.

Over the course of the RFP, attrition through ending employment (retirements and resignations) has severely hampered Winthrop's ability to meet the facilities demands of a campus our size and age. Consider that as of September 3, the University had only 47 active facilities employees. Nearly half the number of total facilities positions are vacant.

Due to the length of the solicitation process, uncertainty about future opportunities, and lack of communication due to restrictions inherent to the procurement process, good employees have sought employment elsewhere. Some of those employees were ones we hoped would continue serving the Winthrop campus community through the outsourced solution. The reality is Winthrop

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Rock Hill, SC 29733
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will continue to lose valued employees as the uncertainty over the status of the contract degrades morale even further and negatively impacts remaining staff's loyalty and productivity.

At the same time, the University is taking a daily financial hit by continuing to issue purchase orders simply to get maintenance and repairs addressed in a timely manner. This is a concerning pattern and not in the best interest of Winthrop or the State to continue indefinitely while the solicitation is on hold. For example, Winthrop no longer employs a single HVAC or plumbing employee, yet the business of the University is expected to continue with no disruption. With a campus of 72 buildings, including six residence halls, every single HVAC repair is having to be contracted individually and subject to the timing and expense of local service providers. Additionally, Winthrop has had to hire several local grounds crews just to rotate maintaining our scenic campus during one of the busiest times of year with multiple visits daily from prospective students and families, alumni and the general public.

Most importantly, these realities are having a severe negative impact on the student experience. Since welcoming students back to campus in August, residential students have had to wait days for air conditioning repairs, which is unacceptable in the sweltering days of summer in the South. Likewise, with our aging facilities, systems fail more frequently, meaning classrooms, offices and even whole buildings where State employees are assigned to work are regularly affected.

While our administration expected some attrition in our facilities workforce when we chose to enter the RFP process, we hoped for and expected a more efficient process without lengthy delays that would negatively impact our ability to start our 140th academic year without continuing facilities issues. Winthrop has been hammered for months in the media for deficiencies in our landscaping; parents and students are unhappy with the state of especially our residential facilities; and alumni and retirees bemoan the "old days" when more care was taken on all aspects of the campus experience. These estimations all reflect poorly on Winthrop and the State and must be addressed.

In short, the last few months have been a nightmare from a service delivery perspective. I encourage you to assist Winthrop in securing this contract to facilitate the transition to a fully outsourced solution. Our community has waited patiently for basic services that have for too long been out of our control to deliver. Our remaining staff deserve to know the status of their future employment. Our institution is unfairly dealing with reputational harm while this process drags out.

Please contact me if you have any questions regarding why I feel so strongly that the awarding of this contract without further delay is necessary to protect the interests of the State of South Carolina and one of its longstanding public institutions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Serna', with a long horizontal flourish extending to the right.

Edward A. Serna
President