

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Ard's Container Service

Materials Management Office
IFB/RFP No. 5400006249

Solid Waste
Adjutant General's Office

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2013-141

POSTING DATE: December 2, 2013

MAILING DATE: December 2, 2013

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest dated October 31, 2013, from Ard's Container Services (Ard's). With this invitation for bids (IFB), the South Carolina Materials Management Office (MMO) attempts to procure solid waste disposal services for the Adjutant General's Office (AGO). Following the evaluation; on October 31, 2013, posted its intent to award to Allwaste Services, Inc. (Allwaste) On November 14, 2013, Stephan Ard of Ard's protested the award to Allwaste writing, "I know the time has elapsed by a couple of days, but was working on my issues to secure this account. The other thing is Allied Waste is protesting the same company. As far as I see this is still an open account. So please let me know when the hearing for this is so I can gather my information to show that I am the correct fit for this account."

In order to resolve the matter, the CPO conducted a hearing November 21, 2013. Appearing before the CPO were Ard's, represented by Stephan Ard; Allwaste, represented by Vickie Towery-Cook; and MMO, represented by John Stevens, State Procurement Officer.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On June 19, 2013, MMO issued the IFB. (Ex. 1)
2. On July 15, 2013, MMO conducted a pre-bid conference.
3. On July 25, 2013, MMO issued Amendment #1 replacing the IFB. (Ex. 2)
4. On August 13, 2013, MMO opened the bids. (Ex. 3)
5. On October 31, 2013, MMO posted its Intent to Award to Allwaste. (Ex. 8)
6. On November 12, 2013, MMO suspended its Intent to Award because of a protest by another bidder. (Ex. 9)
7. On November 14, 2013, Ard's filed its protest with the CPO.

DISCUSSION

MMO solicited bids for solid waste disposal at twelve (12) AGO facilities in Richland County. The IFB required the contractor to "install the types and sizes of containers per the current frequency list herein." A total of 69 containers ranging in size from 2 yards to 40 yards were required. (Ex. 2, p. 18) The IFB read "This specification covers refuse, trash and recycling collection, transportation and disposal services. The work required includes the furnishing of all labor, transportation, equipment and materials necessary to provide the required level of services." (Ex. 2, Specifications, p. 17) Disposal required the transportation of the containers to "designated and authorized refuse collection site[s]" on a certain frequency schedule appropriate for each container.

CONCLUSIONS OF LAW

The Consolidated Procurement Code, which endows actual bidders with the privilege of protesting an award, reads, in part, "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.” [11-35-4210(1)(b)] [Emphasis added] MMO posted its intent to award October 31, 2013. Ard’s filed its protest with the CPO on November 14, 2013, fourteen days after MMO posted its intent to award. Therefore, Ard’s protest was untimely filed.

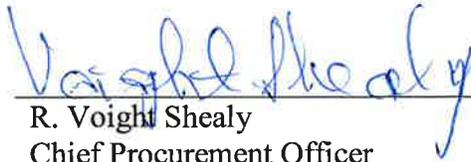
The South Carolina Procurement Review Panel (Panel) has repeatedly held that the time for filing cannot be waived. *Protest of Jones Engineering Sales, Inc.*, Panel Case No. 2001-8 (finding that the CPO did not have jurisdiction to rule on the protest issue because the time for filing protests of the solicitation is jurisdictional and may not be waived); *Protest of National Cosmetology Ass’n*, Panel Case No. 1996-17 (finding that “where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver”); *Protest of Vorec Corporation*, Panel Case No. 1994-9 (finding that a protest of award was untimely when it was filed one day after the deadline established by the Code prior to its amendment). The Panel has explained its rationale for why this time limit is jurisdictional and cannot be waived as follows:

[I]t is essential to the operation of the government that challenges to its purchasing decisions be limited. If the time for filing protests can be waived, the State will be unable to determine with certainty when it can enter into a contract with one vendor for vital goods and services without the danger of being liable to another vendor.

Protest of Oakland Janitorial Services, Inc., Panel Case No. 1988-13.

DETERMINATION

For the foregoing reasons the protest is denied.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services

12/2/2013

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised June 2013)

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 108.1 of the 2013 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
1105 Pendleton Street, Suite 202, 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.

Skinner, Gail

From: Protest-MMO
Sent: Thursday, November 14, 2013 4:35 PM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Protest

From: sard@ardscontainer.com
Sent: Thursday, November 14, 2013 4:35:26 PM (UTC-05:00) Eastern Time (US & Canada)
To: Protest-MMO
Subject: Protest

I would like to protest the National Gaurd Solid Waste bid that was awarded to ASI. I know the time has elapsed by a couple of days, but was working on my issues to secure this account. The other thing is Allied Waste is protesting this same company, so as far as I see this is still an open account. So please let me know when the hearing for this is so I can gather my information to show that I am the correct fit for this account.

Thank you,
Stephen M. Ard
Ard's Container Service
Columbia 803-933-9336
Florence 843-407-0352
Fax 803-233-1742
www.ardscontainer.com