

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

American Solutions for Business

Department of Health & Human
Services

RFQ # 5400007465

Employee Appreciation Gift

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO. 2014-119

POSTING DATE: May 27, 2014

MAILING DATE: May 27, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed April 3, 2014 by Tina Lewandowski of American Solutions for Business (American Solutions) under authority of South Carolina Code Section 11-35-4210. With this request for quotations (RFQ), the Department of Health and Human Services (DHHS) attempts to procure employee appreciation gifts. After evaluating the quotations, on March 28, 2014, DHHS issued Purchase Order # 4600328410 to SI-Solutions, Inc. American Solutions for Business DHHS's handling of the solicitation.

As the issues to be decided are statutory, the CPO makes this decision without the benefit of a hearing, based upon an administrative review of the protest letter [Ex. 1 attached], Victoria Easterlin, DHHS's Procurement Manager response [Ex. 2 attached], and the procurement file.

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 March 10, 2014, DHHS issued Request for Quotations (RFQ) for 1,300 imprinted and set up Lounger Chairs as employee appreciation gifts. [Ex. 3] Quotations were to be delivered to

DHHS by March 18, 2014. Although the solicitation does not expressly say so, it was apparently issued pursuant to the small purchases procedures provided for in S.C. Code Ann. § 11-35-1550 (2011).

2. On March 21, 2014, DHHS issued Amendment #1 reading:

This solicitation was only re-opened for the purpose of entering and evaluation bids accepted on or before 10:00 am, Tuesday, March 18, 2014.

The closing date for this solicitation will be 11:30 am, Monday, March 24, 2014.

The new award posting date will be Tuesday, March 25, 2014.¹

3. On March 24, 2014, DHHS closed the bid receipt period.
4. On March 28, 2014, DHHS issued Purchase Order 4600328410 to SI-Solutions, Inc. for a total value of \$17,758.00. [Ex. 4]
5. On April 3, 2014, Tina Lewandowski of American Solutions for Business protested Amendment 1 by email to the CPO. [Ex. 1]

CONCLUSIONS OF LAW

Ms. Lewandowski of American Solutions alleged in her April 3 protest:

Quotation number 5400007465 was issued March 10, 2014 with a return date of March 18, 2014 at 10:00 A.M. All quotations were subject to return to Victoria G. Easterlin. The response time was then extended, per a private email, and not published on the solicitation website to March 21, 2014. On March 27, 2014 Victoria G. Easterlin sent out a mass email asking several people to have their final bid numbers in by 4:00 P.M. that day. It was because of this email others were able to see the correspondence between Victoria G. Easterlin and Bruce Siegal whom is a fellow competitor in which was also bidding on this quotation. It was on April 1, 2014 an amendment to this quotation was posted.

According to South Carolina Consolidated Procurement Code & Regulations Annotated Code 11-35-1520(7) page 22 and 19-445-2085(A) page 132 the actions above are unjust and this quotation should be deleted from further action and re-issued.

Included in the body of the message was the text of an email generated by SCEIS:

¹ The title block of Amendment 1 reflects March 10 as its issue date. The body of the amendment bears a date of March 21, 2014. The solicitation page in SCEIS indicates the Amendment was actually posted the afternoon of March 21: <http://webprod.cio.sc.gov/SCSolicitationWeb/contractSearch.do?solicitnumber=5400007465> (last viewed May 23, 2014).

From: "SCProcure@sceis.sc.gov" <SCProcure@sceis.sc.gov>
Subject: SC Solicitation: Employee Appreciation Gift
Date: March 20, 2014 at 2:01:03 AM EDT
To: Christine Moran <crmoran@americanchas.com>

You may be interested in the following solicitation...

Solicitation Number: 5400007465
Description: Employee Appreciation Gift
Submission Ending Date/Time: 03/20/2014 17:00:00

Solicitation -
<http://webprod.cio.sc.gov/SCSolicitationWeb/solicitationAttachment.do?solicitationnumber=5400007465>

Sincerely,
VICTORIA EASTERLIN
South Carolina State Government

The Consolidated Procurement Code, which grants bidders the privilege to protest, reads as follows:

(a) A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

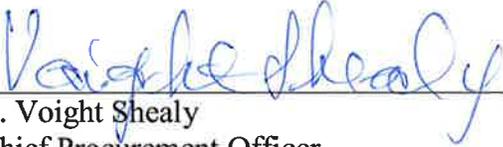
(b) Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(d) 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.

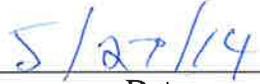
Section 11-35-4210(A) (1) Right to Protest; Exclusive Remedy (emphasis supplied). By the time Ms. Lewandowski filed her protest, DHHS had already issued a purchase order, which established that the actual value of the solicitation was \$17,758. Since the actual value of the contract is less than \$50,000, the CPO lacks jurisdiction to consider the matter. *Appeal by Appraise Sell, LLC*, Panel Case No. 2010-8.

DETERMINATION

For the reasons stated above, the protest of American Solutions is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



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.

Shealy, Voight

From: Tina Lewandowski <tinam.lewandowski@outlook.com>
Sent: Thursday, April 03, 2014 9:55 AM
To: Shealy, Voight
Cc: msims@scdhhs.gov; plarimore@scdhhs.gov
Subject: Quotation 5400007465

Categories: Red Category

Mr. Shealy,

Quotation number 5400007465 was issue March 10, 2014 with a return date of March 18, 2014 at 10:00 A.M.. All quotations were subject to return to Victoria G. Easterlin. The response time was then extended per the solicitation website to March 21, 2014. On March 27, 2014 Victoria G. Easterlin sent out a mass email asking several people to have their final bid numbers in by 4:00 P.M. that day. It was because of this email others were able to see the correspondence between Victoria G. Easterlin and Bruce Siegal whom is a fellow competitor in which was also bidding on this quotation. It was on April 1, 2014 an amendment to this quotation was posted.

According to South Carolina Consolidated Procurement Code & Regulations Annotated Code 11-35-1520(7) page 22 and 19-445-2085(A) page 132 the actions above are unjust and this quotation should be deleted from further action and re-issued.

Thank you for your time.

Tina Lewandowski
Account Executive
American Solution for Business
(843) 494-2126

Sent from Windows Mail

From: Tina Lewandowski [<mailto:tina@americanchas.com>]
Sent: Thursday, April 03, 2014 11:13 AM
To: Shealy, Voight
Cc: Christine Moran; Amy Spychalla
Subject: Quotation 5400007465

Mr. Shealy,

Quotation number 5400007465 was issued March 10, 2014 with a return date of March 18, 2014 at 10:00 A.M.. All quotations were subject to return to Victoria G. Easterlin. The response time was then extended, per a private email, and not published on the solicitation website to March 21, 2014. On March 27, 2014 Victoria G. Easterlin sent out a mass email asking several people to have their final bid numbers in by 4:00 P.M. that day. It was because of this email others were able to see the correspondence between Victoria G. Easterlin and Bruce Siegal whom is a fellow competitor in which was also bidding on this quotation. It was on April 1, 2014 an amendment to this quotation was posted.

According to South Carolina Consolidated Procurement Code & Regulations Annotated Code 11-35-1520(7) page 22 and 19-445-2085(A) page 132 the actions above are unjust and this quotation should be deleted from further action and re-issued.

Thank you for your time.

Tina Lewandowski
Account Executive
American Solution for Business
(843) 494-2126

Sent from Windows Mail

From: Christine Moran
Sent: Thursday, April 3, 2014 12:57 PM
To: Tina Lewandowski

Begin forwarded message:

From: "SCProcure@sceis.sc.gov" <SCProcure@sceis.sc.gov>
Subject: **SC Solicitation: Employee Appreciation Gift**
Date: March 20, 2014 at 2:01:03 AM EDT
To: Christine Moran <crmoran@americanchas.com>

You may be interested in the following solicitation...

Solicitation Number: 5400007465
Description: Employee Appreciation Gift
Submission Ending Date/Time: 03/20/2014 17:00:00

Solicitation -
<http://webprod.cio.sc.gov/SCSolicitationWeb/solicitationAttachment.do?solicitnumber=5400007465>

Sincerely,
VICTORIA EASTERLIN
South Carolina State Government

EASTERV@scdhhs.gov

*** You received this e-mail notification because your business has been designated by a SC State Government procurement officer as a potential bidder for the solicitation above.

From: Tina Lewandowski [<mailto:tina@americanchas.com>]
Sent: Thursday, April 03, 2014 11:04 AM
To: Shealy, Voight
Subject: Fw: SC Solicitation: Employee Appreciation Gift

Mr. Shealy,

Below you will find an email sent to a co-worker from Victoria G. Easterlin with a closing dating that was not posted on the website for the same bid.

Tina Lewandowski

Sent from Windows Mail

From: Christine Moran
Sent: Thursday, April 3, 2014 12:57 PM
To: Tina Lewandowski

Begin forwarded message:

From: "SCProcure@sceis.sc.gov" <SCProcure@sceis.sc.gov>
Subject: **SC Solicitation: Employee Appreciation Gift**
Date: March 20, 2014 at 2:01:03 AM EDT
To: Christine Moran <crmoran@americanchas.com>

You may be interested in the following solicitation...

Solicitation Number: 5400007465
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Solicitation -

<http://webprod.cio.sc.gov/SCSolicitationWeb/solicitationAttachment.do?solicitnumber=5400007465>

Sincerely,
VICTORIA EASTERLIN
South Carolina State Government

EASTERV@scdhhs.gov

*** You received this e-mail notification because your business has been designated by
a SC State Government procurement officer as a potential bidder for the solicitation above.

From: Victoria Easterlin [mailto:EASTERV@scdhhs.gov]
Sent: Tuesday, April 08, 2014 10:12 PM
To: Shealy, Voight; Mary L. Sims
Cc: Tina Lewandowski; Christine Moran; Amy Spychalla; Robertson, Dixon; Skinner, Gail
Subject: RE: Quotation 5400007465 - Protest

Yes, that is correct, only one award was issued and it was to Si-Solutions for \$17,758.

Victoria G. Easterlin, CPPB,CPM

Sent using OWA for iPad

From: Shealy, Voight <VShealy@mmo.sc.gov>
Sent: Tuesday, April 8, 2014 6:23:02 PM
To: Victoria Easterlin; Mary L. Sims
Cc: Tina Lewandowski; Christine Moran; Amy Spychalla; Robertson, Dixon; Skinner, Gail; Shealy, Voight
Subject: FW: Quotation 5400007465 - Protest

Victoria,

According to the attachments, pursuant to this solicitation, DHHS authorized a purchase order to SI Solutions Incorporated for \$17,758. Was this the only award resulting from this solicitation; please confirm.

Voight Shealy

PURCHASE ORDER

Department of Health & Human Services



Purchasing Office
SCDHHS
Attn: Procurement
1801 Main Street, 6th Floor
Columbia SC 29201
Phone: 803-898-2595
Fax: 803-255-8211

Invoice To:
SCDHHS
Attn: Accounts Payable
PO BOX: 8206
Columbia SC 29202-8206
Phone: 803-898-1085
Fax: 803-255-8231

Purchase Order: 4600326410 Date Issued: 03/28/2014 PO Number must appear on all Invoices and Delivery Slips.	Payment Terms: within 30 Days 0.000 Percent Discount.
Vendor: 7000183906 SI-SOLUTIONS INC 901 BROOKWOOD DRIVE COLUMBIA SC 29201 USA	Deliver To: The State of South Carolina H&HS - Richland County 1801 Main Street COLUMBIA SC 29201 USA

INSTRUCTIONS TO VENDOR

Per Terms and Conditions of RFQ 5400007465

Must be received by May 2nd!

Item No	QTY	Order UOM	Description	Unit Price	Amount
001	1,300	EA	Mega Folding Chair with Case #SYHD-330 Delivery Date: 03/15/2014 Color: Royal Blue with white logo	13.6600	17,758.00
				Subtotal:	17,758.00
				Total Value:	17,758.00 USD

Created By: VICTORIA EASTERLIN

Authorized Signature

If received electronically, printed name represents authorized signature for this document

All Sales to the State of South Carolina (SC) are subject to the SC sales and use tax laws, unless such sales are otherwise exempt. The Contractor/Vendor will collect such tax as required.