

NIKKI R. HALEY, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



THE DIVISION OF PROCUREMENT SERVICES
DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS

Protest Decision

Matter of: Stormcomp, LLC

Case No.: 2016-149

Posting Date: June 13, 2016

Contracting Entity: South Carolina Department of Transportation

Solicitation No.: 5400011237

Description: Maintenance of Best Management Practices - Post Construction Ponds and Storm Water Quality Controls

DIGEST

Protest by contractor who did not submit an offer dismissed for lack of standing.

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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

DISCUSSION

Stormcomp, LLC raised three questions about the award to Green Site Services, Inc. alleging, in part, that Green Site is not a responsible bidder. Stormcomp's letter of protest is included by reference. [Attachment 1]

ANALYSIS

Stormcomp alleges that the solicitation included restrictive specifications that prevented it from submitting a bid. These allegations could have been raised as a protest of the solicitation within 15 days of issuance of the solicitation under Section 11-35-4210(1)(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.

However a protest of the solicitation may not be raised after fifteen days of issuance of the solicitation and cannot be raised as a protest of the award under Section 11-35-4210(1)(b).

In addition, Section 11-35-4210(1)(b) of the South Carolina Consolidated Procurement Code grants any actual bidder the right to protest the intended award of a contract as follows:

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.

As conceded in its protest letter and further evidenced by the bid tabulation [Attachment 2], Stormcomp was not an actual bidder and consequently lacks standing to protest this award.

DECISION

For the reasons stated above, the protest is dismissed.

For the Materials Management Office

Michael B. Spicer

Michael B. Spicer
Chief Procurement Officer

Attachment 1

From: [Brandon Wagner](#)
To: [Protest-MMQ](#)
Subject: Contract Number: 4400013122
Date: Monday, May 30, 2016 12:26:01 PM

In regards to contract number: 4400013122

I was incredibly disappointed to learn SCDOT has once again selected Greensite Services for stormwater BMP cleanings.

The most recent RFP, disqualified my new company due to the new qualifications. These qualifications did not apply to Greensite during their first contract with SCDOT. I'm also not sure how Greensite meets the qualifications in the 2016 RFP

The RFP unnecessarily disqualified many companies from this project, while allowing a company that has previously shown gross incompetence in this line of work. (3rd party quantifiable data available upon request)

History of SCDOT's BMP cleaning program:

1st contract – Awarded to Condor Environmental. SCDOT's stormwater BMPs were properly maintained. All/Most BMPs passed 3rd party maintenance inspections by Woolpert Inc.

2nd contract – Awarded to Greensite Services (by former employee of Condor) Almost all BMPs did **NOT** pass 3rd party maintenance inspections as detailed in a maintenance inspection report by Woolpert Inc. The contractor did not follow standard protocol for cleaning BMPs. This is due to a lack of industry knowledge as well as insufficient equipment used to clean MTDs. Documentation of the failed BMP cleanings with quantifiable data are available. A majority of SCDOT's stormwater BMPs are currently in very bad condition. This is primarily a result of Greensite's gross management of stormwater BMPs during the 2nd contract. SCDOT allowed an unqualified/rogue contractor to win the 2nd contract. The business owner of the 1st contract (who properly cleaned BMPs) was forced to go out of business.

The new (2016) RFP unnecessarily disqualified other businesses that were intending to combine resources and knowledge to develop partnerships to best manage SCDOT's BMPs. As a result,

the condition of SCDOT's BMPs will undoubtable continue to suffer and worsen and regulatory fines are a very real possibility. In the event SCDHEC or other regulatory agencies inspect SCDOT's BMPs, the DOT will surely be found out of compliance with their stormwater permit.

To my knowledge, both Sanders Bros, and Storm System Services intended to submit bids, but they were not able to meet the unnecessary qualifications in the RFP.

Did procurement check/review the winning bid for the subcontractor requirements?

Greensite Services does not have capabilities/equipment to clean MTDs. A subcontractor will absolutely be required for this. Greensite used sub-contractors during the previous contract.

Did procurement ensure Greensite meet all qualifications in the RFP? Specifically, the requirement for financial records showing 5 years of compatible services with financial records for proof.

Will there be any oversight to ensure proper maintenance of stormwater BMPs?

--

Brandon Wagner
Stormcomp, LLC
(864) 764-4380
Brandon.Wagner@stormcomp.net

CONFIDENTIALITY NOTICE:

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

Attachment 2

SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION
PURCHASING DIVISION
TABULATION

Tabulated By: Jan
Page 1 of 2

SEALED BID OR QUOTE #: 5400011237
DESCRIPTION: Maint.-Post Constr. Ponds - Storm water Quality Controls
BUYER: E. Kurwan TABULATION DATE: 5-21-2016

THIS TAB/BID SHEET IS PRELIMINARY AND FOR INFORMATION ONLY. THESE BIDS ARE SUBJECT TO REVIEW FOR RESPONSIBILITY AND RESPONSIVENESS, INCLUDING A DETERMINATION IF THEY ARE WITHIN COMPETITIVE RANGE, DBE GOAL COMPLIANCE, AND ANY OTHER NECESSARY REVIEW PROCESS. ONCE REVIEWED AND SUBMITTED TO THE COMMISSION FOR APPROVAL, IF NECESSARY, A NOTICE OF INTENT TO AWARD WILL BE POSTED.

BIDDER NAME	UNIT PRICE	1	2	3	4	5	6	7
<u>Green Site</u>		<u>600.00</u>	<u>100.00</u>	<u>200.00</u>	<u>350.00</u>	<u>200.00</u>	<u>150.00</u>	<u>200.00</u>
<u>Natur-Chem</u> <u>on-Line</u>		<u>195.00</u>	<u>200.00</u>	<u>650.00</u>	<u>1,150.00</u>	<u>850.00</u>	<u>550.00</u>	<u>1,050.00</u>
<u>Weston + Sampson</u> <u>on-Line</u>		<u>555.00</u>	<u>34.00</u>	<u>88.62</u>	<u>348.00</u>	<u>505.00</u>	<u>253.50</u>	<u>2,233.00</u>
						RECEIVED MAY 02 2016 SCDOT PROCUREMENT		<u>RAW</u> <u>5-2-16</u>

Anticipated award date is: _____

SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION
PURCHASING DIVISION

Tabulated By: Jan
Page 2 of 2

TABULATION

SEALED BID OR QUOTE #: 5400011237
DESCRIPTION: Main - Post Constr. Ponds - storm water Quality Controls
BUYER: Co. Kurwan TABULATION DATE: 5-8-2016

THIS TAB/BID SHEET IS PRELIMINARY AND FOR INFORMATION ONLY. THESE BIDS ARE SUBJECT TO REVIEW FOR RESPONSIBILITY AND RESPONSIVENESS, INCLUDING A DETERMINATION IF THEY ARE WITHIN COMPETITIVE RANGE, DBE GOAL COMPLIANCE, AND ANY OTHER NECESSARY REVIEW PROCESS. ONCE REVIEWED AND SUBMITTED TO THE COMMISSION FOR APPROVAL, IF NECESSARY, A NOTICE OF INTENT TO AWARD WILL BE POSTED.

BIDDER NAME	UNIT PRICE	8	9	10	11	12	13	14
Green Site		239.00	4.00	2.60	20.00	1.50	125.00	20.00
Natur-Chem, on-Line		550.00	.16	.50	4.25	2.50	125.00	75.00
Weston & Sampson on-Line		2000.00	3.28	2.28	66.57	8.34	253.50	55.00

Anticipated award date is: _____

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised September 2015)

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 111.1 of the 2015 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 209, 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.