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## Protest Decision

**Matter of:** DFS Enterprises, Inc.

**Case No.:** 2017-112

**Posting Date:** October 17, 2016

**Contracting Entity:** State Fiscal Accountability Authority

**Solicitation No.:** 5400011358

**Description:** Rest Area and Truck Parking Janitorial

### DIGEST

Protest alleging that the lowest responsive bid is unreasonable and the successful bidder is not qualified to perform this contract is denied. DFS Enterprises' (DFS) letter of protest is included by reference. [Attachment 1]

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> 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.

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

## BACKGROUND

<i>Event</i>	<i>Date</i>
Solicitation Issued	07/07/2016
Amendment One Issued	07/29/2016
Amendment Two Issued	08/12/2016
Amendment Three Issued	08/15/2016
Intent to Award Issued	09/22/2016
Protest Received	10/03/2016

## ANALYSIS

The State Fiscal Accountability Authority (SFAA) conducted this Competitive Online Bid on behalf of the South Carolina Department of Transportation on July 07, 2016, to acquire janitorial services, building systems maintenance and repairs for both the interior and exterior of Rest Areas (RA) and Truck Parking Area (TPA) Complexes located throughout the State. An Intent to Award was posted to Johnathan Pratt Landscaping Service (Pratt) on September 22, 2016.

DFS protests that Pratt's bid was unreasonably low and should be rejected under the following provision found in the solicitation:

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

The quoted language from the solicitation, and Regulation 19-445.2070(E), are drawn from the federal acquisition regulations. FAR § 14.404-2, like the South Carolina regulation, is titled "Rejection of individual bids." Section 14.404-2(f) provides:

Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

Decisions<sup>2</sup> interpreting the FAR consistently hold, in the context of a bid protest, that the contracting officer's evaluation for price reasonableness under FAR § 15.402(a) of an offer

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<sup>2</sup> Decisions of the U.S. Comptroller General are not controlling in S.C. State Government protests. It does not appear the Panel has directly and definitively addressed the issue whether pricing that is claimed to be too low must be rejected as non-responsive. In cases like this, federal procurement decisions are enlightening.

provided by a bidder “focuses primarily on whether the offered prices are higher than warranted ... below-cost pricing is not prohibited.” *All Phase Envtl., Inc.*, Nos. B–292919.2–B–292919.7, 2004 WL 437450, at \*7 (Comp.Gen. Feb.4, 2004); *accord CSE Constr.*, No. B–291268.2, 2002 WL 31835783 (Comp.Gen. Dec.16, 2002), at \*4; *see also Rodgers Travel, Inc.*, No. B–291785, 2003 WL 1088876 (Comp.Gen. Mar.12, 2003), at \*2 n. 1 (stating that the purpose of a price reasonableness determination is to ensure that the prices offered are not higher, as opposed to lower, than warranted). Since DFS alleges that Pratt’s prices are too low, not too high, this ground of protest fails to state a claim for relief and must be dismissed.<sup>3</sup>

DFS also questions whether Pratt can perform the contract for its bid price. Generally, a claim that the successful offeror will not perform goes to contract administration and is not a proper ground of protest. To the extent DFS is challenging Pratt’s responsibility, the CPO notes the following. Pratt’s bid of \$3,681,999 per year for these services is two million dollars less than the \$5,668,632 awarded five years ago. Pratt’s award includes nine (9) Rest Area complexes (RA) and four (4) Truck Parking Area (TPA) complexes. In addition to the Rest Areas and Truck Parking Areas, the previous contract included eight (8) Welcome Centers. A change order to the previous contract granted in July of 2014 [Attachment 2] indicates that the Welcome Centers accounted for more than \$1,800,000 of the \$5,668,632 award. This would indicate that financially, the current award is consistent with the previous award. In addition, DFS’ bid for the current contract was only \$10,000 more per year than the low bidder. DFS provides no evidence that Pratt will not be able to perform the contract at the price bid.

DFS also questions Pratt’s ability to perform the contract based on the fact that it is a landscaping business and not a janitorial business. However, DFS provides no documentation or evidence to support its concern and alleges no violation of the Code.

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<sup>3</sup> The Panel has determined that a claim of unreasonably low pricing does not, without more, establish a violation of the Code’s obligation of good faith. *Appeal by Catamaran LLC*, Panel Case No. 2015-2. In fact, the Panel quoted federal decisions to support its holding that a protestor’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. *Id.*

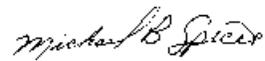
Protest Decision, page 4  
Case No. 2017-112  
October 17, 2016

Without evidence that Pratt is not a responsible bidder or that there was some violation of the Code there is no valid reason to overturn the procurement officer's determination.

**DECISION**

For the reasons stated above, the protest of DFS Enterprises, Inc. is denied.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**From:** [lw@](mailto:lw@)  
**To:** [Protest-MMO](#)  
**Subject:** Solicitation # 5400011358- rest areas & truck parking janitorial  
**Date:** Saturday, October 01, 2016 12:05:30 AM

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This is DSF Enterprises INC, Aiken, SC. My name is John L. Wallace My protest/observation/concern is related to item (D.) (R-19-445-2070) Price Reasonableness. The previous bid for the above was approximately \$5,668,632 annually. five years ago. The intended to award bid that were issued on 9/22/2016 is approximately \$2,000,000 less annually. Furthermore, labor cost will be approximately \$250,000 thousand dollars more annually because they will have to pay \$10.00 hr to all regular custodians not including the supervisors that is required for this contract. My company had a 2nd place ranking and a difference of about \$10,000.00. I realize that the bid five years ago is minus 1 lot bidding schedule but that was only about \$10,000.00. I refer back to item D in the solicitation price reasonableness. How can this contract be executed efficiently five years later with that kind of decrease in price? (A.) Will the intended awardee be able to deliver quality services to the state at the awarded price? B. Moreover, The intended bidder is a landscaping business not a janitorial company. DSF Enterprises have been in business since 1999 and have excellent customer service skills in all aspects of cleaning, using biodegradable products and the right chemicals for the floors, and understanding that different chemicals can cause health hazards to the public if not utilized properly. This is my proposal to the state which would be fair and realistic, is to have the top two or three re-submit a for this solicitation to the MMO office using a paper bid with a price between \$4,000,000 and \$5,000,000 annually and the lowest responsible and responsive bidder can execute this contract with quality and still save the state and taxpayers money. I hope that you will consider this seriously and take a look at these suggestions.

Thanking you in advance for your time and consideration in this matter.

Sincerely,

John L. Wallace/President of DSF Enterprises INC

10/1/2016



**PROPOSED BILLING RATES FOR SC REST AREAS AND WELCOME CENTERS** As of 6/18/14  
**CONTRACT PERIOD 6/12/14 - 6/11/15**

	CURRENT PRICE 6/12/13 - thru 6/11/14		PROPOSED PRICE CALHOUN EB & WB CLOSED 6/12/14 - 6/11/15		PROPOSED PRICE CALHOUN EB & WB OPEN 6/12/14 - 6/11/15	
	ANNUAL BASIS	MONTHLY BASIS	ANNUAL BASIS	MONTHLY BASIS	ANNUAL BASIS	MONTHLY BASIS
<b>TOTAL CONTRACT AMOUNT</b>	<b>\$5,868,770.04</b>	<b>\$489,064.17</b>	<b>\$5,624,152.44</b>	<b>\$468,679.37</b>	<b>\$5,968,539.00</b>	<b>\$497,378.25</b>
UPSTATE REGION	\$1,843,325.40	\$153,610.45	\$1,874,661.96	\$156,221.83	\$1,874,661.96	\$156,221.83
MIDSTATE REGION	\$1,695,906.24	\$141,325.52	\$1,338,918.12	\$111,576.51	\$1,724,736.60	\$143,728.05
LOWER STATE REGION	\$2,233,080.84	\$186,090.07	\$2,312,475.00	\$192,706.25	\$2,271,043.08	\$189,253.59
TRUCK PARKING AREAS	\$96,457.56	\$8,038.13	\$98,097.36	\$8,174.78	\$98,097.36	\$8,174.78
<b>TOTAL OF REGIONS</b>	<b>\$5,868,770.04</b>	<b>\$489,064.17</b>	<b>\$5,624,152.44</b>	<b>\$468,679.37</b>	<b>\$5,968,539.00</b>	<b>\$497,378.25</b>
<b>UPSTATE REGION</b>						
ANDERSON R/A (I-85 NB)	\$187,317.96	\$15,609.83	\$190,502.40	\$15,875.20	\$190,502.40	\$15,875.20
ANDERSON R/A (I-85 SB)	\$187,317.96	\$15,609.83	\$190,502.40	\$15,875.20	\$190,502.40	\$15,875.20
LAURENS R/A	\$176,167.68	\$14,680.64	\$179,162.52	\$14,930.21	\$179,162.52	\$14,930.21
NEWBERRY R/A (I-26 EB)	\$187,814.88	\$15,651.24	\$191,007.72	\$15,917.31	\$191,007.72	\$15,917.31
NEWBERRY R/A (I-26 WB)	\$187,814.88	\$15,651.24	\$191,007.72	\$15,917.31	\$191,007.72	\$15,917.31
SPARTANBURG W/C (LANDRUM)						
R/A & W/C FACILITY	\$202,556.56	\$16,879.83	\$205,998.96	\$17,166.58	\$205,998.96	\$17,166.58
W/C PROVISIONS	\$956.64	\$79.72	\$972.96	\$81.08	\$972.96	\$81.08
YORK W/C (FT. MILL)						
R/A & W/C FACILITY	\$205,549.68	\$17,129.14	\$209,044.08	\$17,420.34	\$209,044.08	\$17,420.34
W/C PROVISIONS	\$1,043.52	\$86.96	\$1,061.28	\$88.44	\$1,061.28	\$88.44
CHEROKEE W/C (BLACKSBURG)						
R/A & W/C FACILITY	\$212,569.08	\$17,714.09	\$216,182.76	\$18,015.23	\$216,182.76	\$18,015.23
W/C PROVISIONS	\$1,080.96	\$90.08	\$1,099.32	\$91.61	\$1,099.32	\$91.61
OCONEE W/C (FAIR PLAY)						
R/A & W/C FACILITY	\$291,919.08	\$24,326.59	\$296,881.68	\$24,740.14	\$296,881.68	\$24,740.14
W/C PROVISIONS	\$1,217.52	\$101.46	\$1,238.16	\$103.18	\$1,238.16	\$103.18
<b>TOTAL UPSTATE REGION</b>	<b>\$1,843,325.40</b>	<b>\$153,610.45</b>	<b>\$1,874,661.96</b>	<b>\$156,221.83</b>	<b>\$1,874,661.96</b>	<b>\$156,221.83</b>
<b>MIDSTATE REGION</b>						
CALHOUN R/A (I-26 EB)	\$189,684.60	\$15,807.05	\$0.00	\$0.00	\$192,909.24	\$16,075.77
CALHOUN R/A (I-26 WB)	\$189,684.60	\$15,807.05	\$0.00	\$0.00	\$192,909.24	\$16,075.77
CHESTER R/A (I-77 NB)	\$183,833.16	\$15,319.43	\$186,958.32	\$15,579.86	\$186,958.32	\$15,579.86
CHESTER R/A (I-77 SB)	\$183,833.16	\$15,319.43	\$186,958.32	\$15,579.86	\$186,958.32	\$15,579.86
KERSHAW R/A (I-20 EB)	\$187,106.76	\$15,592.23	\$190,287.60	\$15,857.30	\$190,287.60	\$15,857.30
KERSHAW R/A (I-20 WB)	\$187,106.76	\$15,592.23	\$190,287.60	\$15,857.30	\$190,287.60	\$15,857.30
SUMTER R/A (I-95 NB)	\$178,484.76	\$14,873.73	\$181,518.96	\$15,126.58	\$181,518.96	\$15,126.58
SUMTER R/A (I-95 SB)	\$178,484.76	\$14,873.73	\$181,518.96	\$15,126.58	\$181,518.96	\$15,126.58
AIKEN W/C (N. AUGUSTA)						
R/A & W/C FACILITY	\$216,569.52	\$18,047.46	\$220,251.24	\$18,354.27	\$220,251.24	\$18,354.27
W/C PROVISIONS	\$1,118.16	\$93.18	\$1,137.12	\$94.76	\$1,137.12	\$94.76
<b>TOTAL MIDSTATE REGION</b>	<b>\$1,695,906.24</b>	<b>\$141,325.52</b>	<b>\$1,338,918.12</b>	<b>\$111,576.51</b>	<b>\$1,724,736.60</b>	<b>\$143,728.05</b>

	CURRENT PRICE 6/12/13 - 6/11/14		PROPOSED PRICE CALHOUN EB & WB CLOSED 6/12/14 - 6/11/15		PROPOSED PRICE CALHOUN EB & WB OPEN 6/12/14 - 6/11/15	
	ANNUAL BASIS	MONTHLY BASIS	ANNUAL BASIS	MONTHLY BASIS	ANNUAL BASIS	MONTHLY BASIS
	<b>LOWER STATE REGION</b>					
CHARLESTON R/A	\$194,579.64	\$16,214.97	\$197,887.44	\$16,490.62	\$197,887.44	\$16,490.62
COLLETON R/A (I-95 NB)	\$198,611.04	\$16,550.92	\$201,987.48	\$16,832.29	\$201,987.48	\$16,832.29
COLLETON R/A (I-95 SB)	\$198,611.04	\$16,550.92	\$201,987.48	\$16,832.29	\$201,987.48	\$16,832.29
ORANGEBURG R/A (I-95 NB SANTEE)	\$179,671.20	\$14,972.60	\$182,725.56	\$15,227.13	\$182,725.56	\$15,227.13
ORANGEBURG R/A (I-26 EB)	\$183,149.88	\$15,262.49	\$227,695.32	\$18,974.61	\$186,263.40	\$15,521.95
ORANGEBURG R/A (I-26 WB)	\$183,149.88	\$15,262.49	\$186,263.40	\$15,521.95	\$186,263.40	\$15,521.95
HORRY W/C (LITTLE RIVER)						
R/A & W/C FACILITY	\$196,915.20	\$16,409.60	\$200,262.72	\$16,688.56	\$200,262.72	\$16,688.56
W/C PROVISIONS	\$882.12	\$73.51	\$897.12	\$74.76	\$897.12	\$74.76
JASPER W/C (HARDEEVILLE)						
R/A & W/C FACILITY	\$400,800.12	\$33,400.01	\$407,613.72	\$33,967.81	\$407,613.72	\$33,967.81
W/C PROVISIONS	\$1,602.60	\$133.55	\$1,629.84	\$135.82	\$1,629.84	\$135.82
DILLON W/C						
R/A & W/C FACILITY	\$308,529.48	\$25,710.79	\$313,774.44	\$26,147.87	\$313,774.44	\$26,147.87
W/C PROVISIONS	\$1,515.72	\$126.31	\$1,541.52	\$128.46	\$1,541.52	\$128.46
ORANGEBURG W/C (SANTEE)						
R/A & W/C FACILITY	\$184,093.92	\$15,341.16	\$187,223.52	\$15,601.96	\$187,223.52	\$15,601.96
W/C PROVISIONS	\$969.00	\$80.75	\$985.44	\$82.12	\$985.44	\$82.12
<b>TOTAL LOWER STATE REGION</b>	<b>\$2,233,080.84</b>	<b>\$186,090.07</b>	<b>\$2,312,475.00</b>	<b>\$192,706.25</b>	<b>\$2,271,043.08</b>	<b>\$189,253.59</b>
<b>TRUCK PARKING AREAS</b>						
AIKEN (I-20 EB)	\$12,019.92	\$1,001.66	\$12,224.28	\$1,018.69	\$12,224.28	\$1,018.69
AIKEN (I-20 WB)	\$12,019.92	\$1,001.66	\$12,224.28	\$1,018.69	\$12,224.28	\$1,018.69
DARLINGTON (I-20 EB)	\$14,069.88	\$1,172.49	\$14,309.04	\$1,192.42	\$14,309.04	\$1,192.42
DARLINGTON (I-20WB)	\$14,069.88	\$1,172.49	\$14,309.04	\$1,192.42	\$14,309.04	\$1,192.42
DORCHESTER	\$14,461.08	\$1,205.09	\$14,706.96	\$1,225.58	\$14,706.96	\$1,225.58
JASPER (I-95 NB)	\$14,908.44	\$1,242.37	\$15,161.88	\$1,263.49	\$15,161.88	\$1,263.49
JASPER (I-95 SB)	\$14,908.44	\$1,242.37	\$15,161.88	\$1,263.49	\$15,161.88	\$1,263.49
<b>TOTAL TRUCK PARKING AREAS</b>	<b>\$96,457.56</b>	<b>\$8,038.13</b>	<b>\$98,097.36</b>	<b>\$8,174.78</b>	<b>\$98,097.36</b>	<b>\$8,174.78</b>
<b>COST PER 8-HOUR SHIFT</b>	<b>\$151.16</b>		<b>\$153.73</b>		<b>\$153.73</b>	

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

*Protest Appeal Notice (Revised October 2016)*

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>

**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 2016 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**

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\_\_\_\_\_  
Name of Requestor

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Business Phone

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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.**