

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of:
Request for Cancellation of Award Prior
to Performance

South Carolina
Department of Transportation

IFB # 5400006770
Brush Chippers

BEFORE THE CHIEF PROCUREMENT OFFICER

WRITTEN DETERMINATION

POSTING DATE: December 9, 2013
MAILING DATE: December 9, 2013

This matter comes before the Chief Procurement Officer (CPO) pursuant to a letter dated October 25, 2013, from David Rawl, Assistant CPO for Commodities and Service Contracts, asking the CPO to cancel SCDOT's award of IFB #5400006770 for Brush Chippers prior to performance under authority of S.C. Code Ann. Reg. 19-445.2085(C)(7), administrative error of the purchasing agency discovered prior to performance. A copy of his letter is attached.

As justification for SCDOT's request, Mr. Rawl wrote, "The now apparent low bidder submitted a timely offer but unfortunately it was misfiled and not included with the other responses that were read and evaluated. We have contacted the awarded vendor and suspended the award today prior to performance."

S.C. Code Ann. § 11-35-1520(10) requires award of a contract must be made to the lowest responsive and responsible bidder "[u]nless there is a compelling reason to reject bids as prescribed by regulation of the board...." The Code's requirement to award to the lowest responsive and responsible bidder has not been met in this case. Mr. Rawl asks the CPO to rectify that error.

Section 11-35-1520(7) provides "Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts, after award but before performance, must be supported by a written determination of appropriateness

made by the chief procurement officers or head of a purchasing agency.” Supporting Regulation 19-445.2085(C) authorizes cancellation of an award prior to performance reading:

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies, services, information technology, or construction being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the purchasing agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.

Taken together, these provisions authorize the Chief Procurement Officer to cancel an award of a contract before performance begins, when a compelling reason exists and one or more of the grounds listed in the Regulation are present.

DISCUSSION

SCDOT published IFB No. 5400006770 for brush chippers October 1, 2013 and amended the solicitation once the same day. SCDOT asked for bids to be submitted by October 22, 2013 at 10:00AM. On that date and time, SCDOT gathered the bids received, conducted the public bid opening, evaluated the bids and determined the apparent low bid. On October 23, 2013, SCDOT posted an award to Ditch Witch of the Carolinas. On October 25, 2013, Mr. Rawl informed the CPO that his staff had found an unopened bid they had overlooked. Upon finding the missing bid, SCDOT opened it and discovered it to be lower than the awarded bidder. Therefore, Mr. Rawl asks the CPO to cancel SCDOT's award due to administrative error.

These factors combine to furnish a compelling reason not to award the contract. Consequently, the CPO finds that SCDOT's request to cancel the award prior to performance should be granted.

DETERMINATION

For the foregoing reasons, SCDOT's request to cancel the award of IFB #5600006770 to Ditch Witch of the Carolinas is granted. The solicitation is remanded to SCDOT to proceed in accordance with the Consolidated Procurement Code.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

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

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b) states:

- (1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
- (b) requests for review of other written determinations, decisions, policies, and procedures arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

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 S.C. Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6), 11-35-4330, 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.



South Carolina
Department of Transportation

955 Park Street, Room 101
Columbia, South Carolina 29201

David Rawl, CPPB
Assistant CPO for Commodities & Service
Contracts
(803) 737-1483 ♦ Fax (803) 737-2046

October 25, 2013

Voight Shealy
Materials Management Officer

Mr. Shealy,

An award was made against solicitation number 5400006770 in accordance with section 19-445.2090, to provide trailer mounted brush chippers for our Equipment Depot here in Columbia.

In accordance with section 19-445-2085 (c) (7) of the South Carolina Consolidated Procurement Regulations, (cancellation of award prior to performance due to administrative error); I request approval to cancel this award and re-award to the lowest responsive and responsible bidder.

The now apparent low bidder submitted a timely offer but unfortunately it was misfiled and not included with the other responses that were read and evaluated. We have contacted the awarded vendor and suspended the award today prior to performance.

A corrected award statement will be issued upon approval of this request.

Regards

David E Rawl, CPPB
Assistant CPO for Commodities and Service Contracts

Approved by: _____
Voight Shealy
Materials Management Officer

Date: _____