

<b>State of South Carolina</b>	)	<b>Before the Chief Procurement Officer</b>
	)	
<b>County of Richland</b>	)	<b>Decision</b>
	)	
<b>In Re: Protest of South Carolina Association for the Deaf</b>	)	<b>Case 2009-203</b>
	)	
<b>Protest of Award: Solicitation 5400000137, Closed Captioning of News Broadcasts</b>	)	<b>Posted: September 12, 2008</b>
	)	<b>Mailed: September 12, 2008</b>
	)	
	)	
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The South Carolina Consolidated Procurement Code grants the right to protest to any bidder who is aggrieved in connection with the solicitation or award of a contract. The South Carolina Association for the Deaf (SCAD) filed a protest of the contract award to Country Wide World Productions resulting from solicitation 5400000137 – Closed Captioning of News Broadcasts, issued by the Information Technology Management Office (ITMO) on behalf of the Office of Regulatory Staff (ORS). The Chief Procurement Officer for Information Technology (CPO) is issuing this decision without a hearing on the merits of the protest.

### **Findings of Fact**

Deadline for receipt of Bids	July 8, 2008, 2:30 PM
SCAD’s written response received:	July 8, 2008, 4:00 PM

### **Discussion**

In its letter of protest dated August 21, 2008, SCAD acknowledges that its bid was submitted after the published deadline for submission of bids. SCAD submitted no further clarification of its protest. Section 11-35-4210 grants any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award of a contract the right to protest to the CPO within 10 days of the date of the notification of intent to award. In Re: Protest of Price Waterhouse, LLP; Appeal by Price Waterhouse, LLP. CASE NO. 1995-15 the Panel ruled:

Because the State cannot legally accept a late bid or proposal, PW's late proposal cannot be considered for award and is in effect the same as not submitting a proposal. Therefore, PW's late proposal cannot confer standing as an “actual” offeror. PW does not have standing as an actual offeror to protest the award of the contract.

## Determination

SCAD is not an actual offeror and consequently lacks standing to protest this award.

### Protest Denied.

For the Information Technology Management Office



Michael B. Spicer  
Chief Procurement Officer

### STATEMENT OF THE RIGHT TO APPEAL

The South Carolina Procurement Code, under Section 11-35-4210, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten calendar days of posting of the decision in accordance with Section 11-35-4210(5). The request for review shall be directed to the appropriate chief procurement officer, who shall forward the request to the Panel, or to the Procurement Review Panel and shall be in writing, setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site:

<http://www.state.sc.us/mmo/legal/lawmenu.htm>

**FILING FEE:** Pursuant to Proviso 66.1 of the 2004 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(4). . . . 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 hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2004 S.C. Act No. 248, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain 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).



WILLIAMS MULLEN

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August 21, 2008

**VIA E-mail to: protest-itmo@cio.sc.gov**

Mr. Michael Spicer  
Chief Procurement Officer  
Information Technology Management Office  
Division of State CIO  
4430 Broad River Road  
Columbia, SC 29210

Re: Information Technology Management Office Solicitation  
Real Time Closed Captioning of News Broadcasts  
Solicitation No. 5400000137  
Intent to Award Posting Date: 8/11/2008

Dear Mr. Spicer:

The South Carolina Association of the Deaf ("Association") understands that its bid was late<sup>1</sup> and therefore it may not have standing to protest the Intent to Award the above-referenced contract to Country World Productions, Inc. / U.S. Captioning Company ("Country World"). However, the Association has serious concerns with the Country World bid. Within your authority as CPO and pursuant to Reg. 19.445.2085(C)(8), you can cancel the proposed award in the best interest of the State.

The Association respectfully requests that the CPO consider the following errors and issues related to the Country World bid:

1. Country World asserts in its bid that the following stations are its business partners: WYFF-TV, WSPA-TV, WIS-TV, WCBD-TV, WBTW-TV. Country World Bid, pp. 6-7. However, contrary to the mandatory requirements of Section A.2 of the IFB, these stations have not agreed to allow Country World to provide captioning services, and, in fact, they cannot agree, as they have exclusive captioning agreements with the Association.

2. Country World asserts in its bid the following:

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<sup>1</sup> The Association had difficulty uploading its bid to the State's automated bidding system which resulted in the Association's bid being late. The Association is still exploring the basis of this difficulty and may amend this protest letter within 5 days to assert additional grounds on this issue.

*A Professional Corporation*

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In order to receive captioning services, each station is required to provide: an encoder, IFB/audio coupler, and two dedicated phone lines (encoder line and audio line). Stations do not pay long distance telephone charges. Each of the selected stations have confirmed that they either have the necessary equipment to receive captioning, or will provide any necessary equipment. Stations will provide the appropriate telephone numbers, and testing for connectivity will be completed with each station.

Country World Bid, p. 5. However, the Association has been informed that these stations have not been contacted by Country World and will not agree to provide the equipment which Country World stated they would provide. Therefore, Country World cannot meet the mandatory requirements of Section A.1 of the IFB.

3. Country World included in its "total cost" line items for equipment and software costs, but erroneously assumed that there would be no such costs as shown below:

Equipment Cost: None – each station already owns the required encoder to receive captioning, and will be responsible to provide the required audio coupler for captioners to receive the audio portion of each newscast.

Software Cost: None – no software is required on the station end.

Country World Bid, p. 26. However, these price conditions are false. The identified stations will not allow Country World to use the encoder equipment and will not provide the audio coupler as Country World indicates as a condition for its price. Second, software is required on the station end and it is a proprietary product, not owned by the stations, which the stations do not have the ability to allow Country World to use.

4. Country World improperly assumed that it will be allowed sell advertising as a way to defray its costs and its bid is conditioned on this assumption. Further, the bid improperly provides for identifying sponsors other than the State in sponsorship banners:

U.S. Captioning Company and the selected stations shall provide to the State of South Carolina Real Time Closed Captioning Sponsorship Banners on each programmed captioned. The banner will include the State of South Carolina Seal with an audio stating "Real Time Closed Captioning of this program is provided by the State of South Carolina".

While U.S. Captioning Company provides the real time closed captioning services to each station, the sponsorship sales

department from Country World Productions will actively seek out advertisers interested in sponsoring closed captioning on the local newscasts on each of these station, to help defray and eliminate the cost of captioning for the citizens and the state of South Carolina, as well as other unsponsored South Carolina stations, to provide quality captioning services to the largest amount of viewers possible.

Country World, p. 13. Contrary to its assumptions, Country World cannot sell advertising. This amounts to the sale of advertising space on these identified stations which Country World does not have the right to do. With regard to sponsorship, the IFB only allows for the identification of the State as a sponsor. IFB, p. 13 of 22, Section A.6. This requirement is necessary since the Public Service Commission specifically mandates the contents of this sponsorship banner. Country World clearly contemplates using this banner to identify paid advertisers which they are specifically not allowed to do.

Further, the following portions of Country World's response were redacted but may contain additional protestable issues and concerns: p. 28 (Cost of Captioning: Sponsorship); p. 12 (Sponsorship); p. 14 (Sponsorship Benefits).

Based on the above, Country World is not a responsive and responsible vendor and did not submit the lowest cost to the State taking into consideration the requirements of the solicitation, the broadcast networks and the hearing-impaired viewers of South Carolina. Interestingly, the IFB states that it seeks to continue providing real-time closed captioning and seeks to maximize the amount of services provided, yet Country World offers 1,274 hours per year less than is currently being provided. We ask that you convene a hearing to address these issues and that you cancel this award and solicitation.

Very truly yours,

A handwritten signature in black ink, appearing to read "John E. Schmidt, III". The signature is written in a cursive style with a long horizontal line extending to the left.

John E. Schmidt, III