

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND)	OFFICER FOR CONSTRUCTION
)	
)	
IN THE MATTER OF: PROTEST)	DISMISSAL
)	
UNKNOWN PERSON (ALIAS)	
JIM JONES))	CASE No. 2007-05
vs.)	
SOUTH CAROLINA STATE)	
UNIVERSITY)	
)	POSTING DATE: JULY 25, 2007
ENGINEERING/COMPUTER SCIENCE)	
COMPLEX CONSTRUCTION/)	
RENOVATION)	
STATE PROJECT No. H24-9628-AC)	
_____)	

This matter is before the Chief Procurement Officer for Construction (“CPOC”) pursuant to a request from an unknown person, alias Jim Jones (Mr. Jones), under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code, for an administrative review of a Notice of Intent to Negotiate a Contract for Professional Services for the Engineering/Computer Science Complex Construction/Renovation project (the “Project”) at South Carolina State University (State). Pursuant to S.C. Code Ann. §11-35-4210(3) (Supp. 2006), the CPOC conducted an administrative review. This decision is based on that review and the applicable law and precedents.

NATURE OF THE PROTEST

On February 15, 2007, State issued a Request for Qualifications from architectural firms interested in providing architectural services for the design and construction of the Project. State received eighteen Statements of Qualification and selected six firms for interviews. On June 13 and 14, 2007, State conducted interviews of the selected firms. On June 20, 2007, State

posted a Notice of Intent to Negotiate a Professional Service contract stating that it intended to negotiate a contract with The Freelon Group/McMillan Smith (Freelon). On June 29, 2007, the CPOC received a protest of State's intent to negotiate a contract with Freelon from Mr. Jones. (A copy is attached as Exhibit "A"). The CPOC assigned an Office of the State Engineer (OSE) project manager, Allen Carter, to investigate Mr. Jones's allegations and prepare a report. In an attempt to establish the identity of the firm Mr. Jones represented, Mr. Carter e-mailed Mr. Jones requesting additional information to include the name of Mr. Jones's firm, the firm's mailing address, and the firm's telephone number. On July 5, 2007, Mr. Jones responded by e-mail stating that his firm was ADW. Mr. Jones included a Charleston address and telephone number. In his response, Mr. Jones also included an additional item of protest. (A copy is attached as Exhibit "B").

Subsequent to Mr. Jones's response of July 5, Mr. Carter checked the Statements of Qualifications received in response to State's solicitation and determined that a firm named ADW neither responded to the solicitation nor was a part of any design team that responded to the solicitation. After attempting to contact Mr. Jones for additional information at the telephone number he previously provided, Mr. Carter discovered that he was calling an answering service. Additional investigation revealed that the Charleston mailing address was also for a telephone answering service. A review of the Department of Labor, Licensing and Regulation records revealed that the only firm with the name ADW licensed to practice architecture in South Carolina is a Charlotte firm. There is no firm with the Name ADW licensed to practice engineering in South Carolina. Mr. Carter contacted ADW to find out if they had submitted the protest. ADW advised Mr. Carter that it had not protested, that it did not have a Charleston office, and that it did not have an employee named Jim Jones. (A copy is attached as Exhibit "C").

Because of the foregoing, the CPOC had a real concern that the protestant did not have standing to protest. Therefore, On July 13, 2007, the CPOC sent Mr. Jones a letter requiring him to provide proof that he or his firm was an actual offeror with the right to protest pursuant to S.C. Code Ann. § 11-35-4210(1)(b) (Supp. 2006). (A copy is attached as Exhibit "D"). This letter provided Mr. Jones with a deadline of July 23, 2007. On July 17, 2007, Mr. Jones, called the CPOC and stated that he did not want to reveal his name or his firm's name for fear of retaliation and asked the CPOC to permit him to proceed with a statement from his attorney that he had standing. The CPOC advised Mr. Jones that such a statement from his attorney would not be sufficient but actual evidence of standing would be necessary. On July 18, 2007, Mr. Jones e-mailed the CPOC that he was having his attorney contact OSE's attorney to certify that Mr. Jones was an actual offeror without providing the actual name of Mr. Jones or his firm. (A copy is attached as Exhibit "E"). The CPOC again responded that he needed the name of Mr. Jones firm to establish standing. Mr. Jones declined to provide his name or the name of his firm.

CPOC FINDINGS

South Carolina Code Ann. § 11-35-4210(1)(b) (Supp. 2006) provides "any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract" with a right of protest. Any such protest for construction related projects must be filed with the CPOC. The language of this statute also limits the CPOC's jurisdiction to protests brought by actual offerors. If Mr. Jones is not an actual offeror, he does not have a right to protest before the CPOC. Mr. Jones has declined to give the CPOC sufficient information for the CPOC to determine he is in fact an actual offeror. Instead, Mr. Jones seeks to proceed with his protest anonymously. If protestants were allowed to protest anonymously, nothing would prevent people who are not actual offerors and who do not have standing from protesting to the CPOC and availing themselves of the remedies of S.C. Code Ann. § 11-35-4210 even

though they do not have a legal right to those remedies. Since the name "Jim Jones" is admittedly an alias, since no one named Jim Jones was an actual offeror, since ADW was not an actual offeror, and since Mr. Jones has declined to provide the actual name of his firm or his own name, the CPOC concludes that Mr. Jones is not an actual offeror and does not have standing. To conclude otherwise would permit abuse of process.

DECISION

It is the decision of the Chief Procurement Officer for Construction that pursuant to SC Code Ann. § 11-35-4210(1)(b), Mr. Jones lacks standing to protest. Therefore, the CPOC has no choice but to dismiss Mr. Jones's protest.

For the foregoing reasons, Protest Dismissed.



John St. C. White
Chief Procurement Officer
For Construction



Date

Columbia, South Carolina

STATEMENT OF THE RIGHT TO APPEAL

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

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

(6) Finality of Decision. 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 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: www.procurementlaw.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 66.1 of the 2005 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." 2005 S.C. Act No. 115, 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). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm