

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Corporate Staffing Services LLC

University of South Carolina
USC-RFP-2040-CJ
USC Aiken Custodial Services

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-106

POSTING DATE: March 28, 2012

MAILING DATE: March 28, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Corporate Staffing Services LLC. With this Request for Proposals (RFP), the University of South Carolina attempts to procure custodial services for its Aiken campus. Corporate Staffing protested USC's award of the contract, claiming (1) USC failed to disclose details of its scoring for evaluation of proposals; (2) certain of the published criteria were subjective and cannot be quantified; and (3) the published evaluation criteria do not accurately measure the quality of service a bidder would provide. USC moved to dismiss the protest as untimely. Because the facts pertinent to resolving the protest appear from the solicitation documents themselves, a hearing is unnecessary.

NATURE OF PROTEST

Corporate Staffing's initial e-mail message, and its subsequent letter of protest, are attached to this decision as Exhibits 1 and 2, respectively, and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On September 1, 2011, USC issued a Request for Proposal of Solicitation No. USC-RFP-2040-CJ (the "RFP") for a term contract for custodial services at its Aiken campus. A copy of the RFP is attached to this decision as Exhibit 3.
2. USC issued three amendments to the RFP, on October 5, October 10, and October 11, 2011. None of the amendments are pertinent to this case.

3. Proposals were opened on October 18, 2011.
4. USC posted its Intent to Award the contract to Aramark Educational Services, LLC, on February 7, 2012. A copy of the notice of intent to award is attached as Exhibit 5.
5. On February 17, 2012, Corporate Staffing sent an email to the Material Management Office Protest mailbox, stating that it “would like to present a protest.” Its message stated no grounds for the protest. [Exhibit 1]
6. On February 24, Corporate Staffing amended its protest by letter. [Exhibit 2]
7. On March 9, 2012, USC moved by letter to dismiss the protest as untimely.

DISCUSSION AND CONCLUSIONS OF LAW

Corporate Staffing argues that the RFP was deficient for failing to disclose exactly how USC would evaluate its award criteria. It also contends that two of the evaluation criteria stated in the RFP “are definitely subjective and really cannot quantitative [*sic*] measure a quality service.” The Consolidated Procurement Code permits a bidder to protest the terms of a solicitation within fifteen days of the issuance of an RFP. Code Section 11-35-4210(1)(a). Any protest “must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided.” Code Section 11-35-4210(2)(b). The issue here is whether Corporate Staffing timely protested the evaluation criteria in the RFP.

USC issued the RFP on September 1, 2011, including in Section VI both the evaluation criteria Corporate Staffing attacks. USC never amended this portion of its RFP. A protest of the criteria must have been filed by September 16, 2011. Code Section 11-35-4210(1)(a). Since Corporate Staffing filed nothing until February 2012, its protest is untimely.

The Code also provides for protesting an award of a contract, so long as that protest is filed within ten days of the state’s notice of award or intent to award. Code Section 11-35-4210(1)(b). However, “a matter that could have been raised ... as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.” *Id.* Regarding the

filing period allowed for a protest of award, the Code reads, “A protest pursuant to subsection (1)(b) must be in writing and must be received by the appropriate chief procurement officer within the time limits established by subsection (1)(b) [10 days]. At any time after filing a protest, but no later than fifteen days after the date of award or notification of intent to award, whichever is earlier, is posted in accordance with this code, a protestant may amend a protest that was first submitted within the time limits established by subsection (1)(b).” Code Section 11-35-4210(2)(b).

If the CPO treats the claims here as a challenge to the award, proper notice of protest must have been filed within ten days after USC posted its intent to award the contract, or by February 17, 2012. Corporate Staffing sent an email to the Protest-MMO mailbox at 4:45 on the afternoon of February 17, thereby meeting this minimum requirement of notice. However, its message is insufficient as it did not state a single ground for the protest. It sets forth neither the basis of the protest nor the relief requested.¹ See, e.g., *Protest of J&T Tech., Inc.*, Panel Case No. 1987-3) (explaining that protestants must “state their grievance with enough specificity to put all parties on notice of the issues to be decided by the CPO and the Panel.”). Not until February 24, 17 days after USC posted its notice of intent to award, did Corporate Staffing state any grounds for the protest. Since the grounds of protest and the relief requested were not filed within fifteen days of the award, it was untimely and must be dismissed. *Protest of DP Consultants, Inc.*, Panel Case No. 1998-6.

¹ The result here would be the same even if Corporate Staffing had timely protested the RFP. The Procurement Code requires that every RFP “must state the relevant importance of the factors to be considered in evaluating proposals but may not require a numerical weighting for each factor.” Section 11-35-1530(5). USC’s request clearly provides that the four factors were listed “in the relevant order of importance, with the first factor being the most important.” That the RFP fails to state “benchmark requirements” does not mean it is defective.

DETERMINATION

For the foregoing reasons, the protest is dismissed.



R. Voight Shealy
Chief Procurement Officer
For Supplies and Services



Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised March 2012)

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: 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 83.1 of the 2011 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 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." 2011 S.C. Act No. 73, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, an incorporated 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).

Skinner, Gail

From: Protest-MMO <Protest-MMO@mmo.sc.gov>
Sent: Friday, February 17, 2012 4:52 PM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Solicitation Number USC-RFP-2040-CJ

From: Nancy Smith[SMTP:NSMITH@CORPORATE-SERVICSSC.COM]
Sent: Friday, February 17, 2012 4:45:48 PM
To: Protest-MMO
Subject: Solicitation Number USC-RFP-2040-CJ
Auto forwarded by a Rule

Corporate Staffing Services would like to present a protest on the solicitation above.

If there is any other information to add please let us know.

Sincerely,

*Marcus G Robinson
President
Corporate Staffing Services*

Shealy, Voight

From: Protest-MMO <Protest-MMO@mmo.sc.gov>
Sent: Friday, February 24, 2012 3:28 PM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Solicitation USC-RFP-2040-CJ
Attachments: Protest Letter USC.pdf

From: Nancy Smith[SMTP:NSMITH@CORPORATE-SERVICESSC.COM]
Sent: Friday, February 24, 2012 3:21:33 PM
To: Protest-MMO
Subject: Solicitation USC-RFP-2040-CJ
Auto forwarded by a Rule

Mr. Shealy,

Please see attachment

Thanks,

*Nancy Smith
Business Researcher
CSS
nsmith@corporate-servicessc.com
864-250-0403 Ext 28*



February 23, 2012

Dear Sirs,

Corporate Staffing Services is protesting the bid # USC-RFP-2040-CJ for the following reasons:

According to Mr. Charles Johnson, the State used four criteria to make their decision. They are: (1) experience, (2) Methodology, (3) cost and (4) Enhancement.

However, the State did not inform bidders of what the benchmark requirements would be for your criteria. For example, how many years of experience should a company have relative to your points scoring process.

Looking at Methodology and Enhancement, these are definitely subjective and really cannot quantitatively measure a quality service.

Cost is measurable and as a bidder we understand that as well other bidders.

Finally, in our position Methodology and Enhancement does not net a quality service for the State, and by using experience, and not stating a benchmark, the bidder with a high number of years of experience get more points but that doesn't necessarily mean a quality service.

Thank you for your time and I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Robbie Robinson", followed by a horizontal line.

Robbie Robinson
Project Manager
864-250-0403