

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Global Industrial Services

Materials Management Office
IFB No. 5400003664
Off -Capitol Complex – Labor/Custodial
Services
For the Budget and Control Board
Division of General Services

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-110

POSTING DATE: April 6, 2012

MAILING DATE: April 6, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Global Industrial Services (Global). With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure Off-Capital Complex labor/Custodial Services for the Budget and Control Board, Division of General Services. In the letter, Global protested MMO's solicitation alleging:

Our company had planned to bid on both option #1 and option #2. Please accept this as our official protest to the above solicitation based on the following:

- There is ambiguity in the original solicitation in that on the front page of the Invitation to Bid it states in bold that the Pre-Bid is Non-Mandatory. Page 16 seems to contradict the disclosure on page one stating site visits must be taken (although it doesn't say mandatory).
- Amendment # 1 states that in order to be considered both options must be provided. Again, on the first page of the Amendment it states in bold that the Pre-Bid is Non-Mandatory. To say the least this is misleading. We have never seen this before.

As the matters to be decided in this case are clear, this decision is based upon an administrative review of the procurement file without a hearing.

NATURE OF PROTEST

The letter of protest is attached and incorporated herein by reference.

FINDINGS OF FACT

The timeline for this solicitation was as follows:

Initial Solicitation Publication Date:	11-02-2011
Amendment #1 Publication Date:	11-08-2011
Amendment #2 Publication Date:	11-21-2011
Amendment # 3 Publication Date:	12-09-2111
Amendment # 4 Publication Date:	12-16-2011
Amendment # 5 Publication Date:	12-29-2011 (Suspended the Bid due to protest)
Amendment # 6 Publication Date:	2-28-2012 (Reinstated the Bid due to resolution of protest)

CONCLUSIONS OF LAW

Global protests, “There is ambiguity in the original solicitation in that on the front page of the Invitation to Bid it states in bold that the Pre-Bid is Non-Mandatory. Page 16 seems to contradict the disclosure on page one stating site visits must be taken (although it doesn’t say mandatory).”

The cover page of the IFB, which was issued November 2, 2011, announced a pre-bid conference to be held “Tuesday, 11/15/2011 -- 1:30 PM” and described it as “Pre-Bid - Non-Mandatory.” While the site visit was “Non-Mandatory”, the IFB also states requirements for a “mandatory” site visit. While the pre-bid and site visit requirements were announced by MMO November 2, 2011, Global did not file its protest until March 9, 2012.

Global also protests “Amendment # 1 states that in order to be considered both options must be provided.”

In Amendment #2 to the solicitation issued November 21, 2011, question #6 addresses the question of whether a vendor may bid only Option #1 if it did not attend the site visit. The question and answer read as follows:

6. Can our company bid only for option 1 due that we didn't make it to the site visit on 11/14/2011?

A. No.

The above answer affirms the language found on page 32 of the original IFB, which read in part,

CALCULATING THE LOW BID (M)

As noted previously in this document, the solicitation contains 2 options. These options include:

1. Contract Labor, and
2. Cleaning/Turn-key Janitorial/Custodial Services

In order to be considered "responsive", bidders must offer on both Options 1 and 2. After opening bids, General Services will add its overhead to the lowest responsive bid for Option 1. This bid will then be compared to the lowest responsive bid for Option 2. The lower of the two resultant bids will be considered the lowest bid for the purposes of evaluation.

MMO issued Amendment #2 November 21, 2011, but Global did not file its protest until March 9, 2012.

DETERMINATION

The Consolidated Procurement Code entitles prospective bidders to protest a solicitation. It reads, in part, "A prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(a) within fifteen days of the date of issuance of the Invitation For Bids or Requests for Proposals or other solicitation documents, whichever is applicable, or any amendment to it, if the amendment is at issue." Code Section 11-35-4210(1)(A) (emphasis added).

The South Carolina Procurement Review Panel has repeatedly held that the time for filing cannot be waived. *See In Re: Protest of Jones Engineering Sales, Inc.*, Panel Case No. 2001-8 (finding that the CPO did not have jurisdiction to rule on the protest issue because the time for filing protests of the solicitation is jurisdictional and may not be waived); *In Re: Protest of National*

Cosmetology Ass'n, Panel Case No. 1996-17 (finding that “where the appeal is not taken within the time provided, jurisdiction cannot be conferred by consent or by waiver”); *In Re: Protest of Vorec Corporation*, Panel Case No. 1994-9 (finding that a protest of award was untimely when it was filed one day after the deadline established by the Code prior to its amendment). The Panel has explained its rationale for why this time limit is jurisdictional and cannot be waived as follows:

[I]t is essential to the operation of government that challenges to its purchasing decisions be limited. If the time for filing protests can be waived, the state will be unable to determine with certainty when it can enter into a contract with one vendor for vital goods and services without the danger of being liable to another vendor.

In Re: Protest of Oakland Janitorial Services, Inc., Panel Case No. 1988-13.

Because Global failed to file its protest until months after MMO issued the controlling documents, and well past the time established by Code Section 11-35-4210(1)(A), the CPO lacks jurisdiction to address the matter. The protest is dismissed as untimely filed.



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, March 09, 2012 12:01 PM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: protest Solicitation Number 5400003664

From: Scott Schwartz[SMTP:SSCHWARTZ@GLOBALSERVICES-USA.COM]
Sent: Friday, March 09, 2012 12:01:22 PM
To: Protest-MMO
Subject: protest Solicitation Number 5400003664
Auto forwarded by a Rule

To Whom It May Concern:

Our company had planned to bid on both option #1 and option #2. Please accept this as our official protest to the above solicitation based on the following:

- There is ambiguity in the original solicitation in that on the front page of the Invitation to Bid it states in bold that the Pre-Bid is Non-Mandatory. Page 16 seems to contradict the disclosure on page one stating site visits must be taken (although it doesn't say mandatory).
- Amendment # 1 states that in order to be considered both options must be provided. Again, on the first page of the Amendment it states in bold that the Pre-Bid in Non-Mandatory. To say the least this is misleading. We have never seen this before.

We believe that in the best interests of the State:

- Bidders should have a further opportunity to visit the sites in order to submit a proposal for both options.
- At the very least we should be permitted to provide a proposal for option #1. As in the original solicitation there was no requirement for a site visit. As option # 1 is strictly a labor contract denying bids would clearly not be in the interests of the state.

Thank you for your consideration.

Scott Schwartz
President



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