

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

The Flooring Connection, LLC

Coastal Carolina University
RFQ #1244VW and IFB #1253VW
Screen, Recoat, Sand, Reseal and/or
Refinish Hardwood Floors at Williams
Brice PE/Kimbel Arena and the Student
Recreation and Convocation Center

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-117

POSTING DATE: June 8, 2012

MAILING DATE: June 8, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from The Flooring Connection, LLC. With these solicitations, Coastal Carolina University (Coastal) attempts to procure services to refinish the hardwood floors at the Williams Brice PE/Kimbel Arena and the Student Recreation and Convocation Center. Coastal first attempted to procure the refinishing services under the small purchase procedures of the Consolidated Procurement Code (the Code) by request for quotations (RFQ) #1244VW. *See* Code Section 11-35-1550. The RFQ proved unsuccessful, however, as all the quotations exceeded the Code's \$50,000 limit allowed requests for quotations. Coastal canceled the RFQ by posting a Statement of No Award and advising all bidders. Coastal resolicited the same refinishing services by invitation for bids (IFB) #1253VW. The Flooring Connection submitted a quotation in response to the RFQ, but did not respond to the IFB. After Coastal posted its intent to award IFB #1253VW to Palmetto Sports Floors, LLC, The Flooring Connection protested both solicitations. Its protest letter alleged:

We would like to formally protest the bid results; based on the fact that we were excluded from the bidding process; due to the fact that the bid documents lacked instructions for rebid procedure and/or cancellation of bids.

Since the issues to be decided are clear, this decision is prepared based upon an administrative review of the procurement documents and the emails exchanged between The Flooring Connection and Coastal.

NATURE OF PROTEST

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

FINDINGS OF FACT

The following dates are relevant to the protest:

1. On March 15, 2012, Coastal issued RFQ #1244VW. (Ex. 1)
2. On the same day, Coastal issued Amendment # 1 to the RFQ. (Ex. 2)
3. On March 26, 2012, Coastal opened the quotations received in response to RFQ # 1244VW.
4. On April 5, 2012, Coastal posted a Statement of No Award. (Ex. 3)
5. Also on April 5, Vicki Williams, Coastal procurement officer, emailed the Statement of No Award to all four vendors who had submitted quotes, including Chris Guidera of The Flooring Connection.¹ (Ex. 4)
6. On April 9, 2012, Coastal issued IFB # 1253VW. (Ex. 5)
7. Also on April 9, Ms. Williams emailed the four vendors who had submitted quotes, including Mr. Guidera, and three additional vendors. Attached to her April 9 message was IFB #1253VW. (Ex. 6)
8. On April 19, 2012, Coastal opened the bids received for IFB # 1253VW. Comparing the tabulation of responses to both solicitations, two of the vendors who quoted RFQ #1244VW also submitted bids for IFB #1253VW.

¹ Mr. Guidera is identified on The Flooring Connection's website as its "Owner/Operator."

9. On April 20, 2012, Coastal posted an Intent to Award IFB # 1253VW to Palmetto Sports Floors, LLC for \$195,578.40.
10. On April 27, 2012, The Flooring Connection filed its protest with the CPO.

DISCUSSION

The Flooring Connection submitted a quotation in response to the RFQ # 1244VW. Coastal rejected the lowest quotation. The Flooring Connection's offer was the next low, making it the lowest responsive and responsible source. However, The Flooring Connection's quotation of \$157,321.60 exceeded the statutory limit for a RFQ. In fact, all four responses were over \$50,000. Coastal therefore lacked legal authority to award a contract pursuant to the small purchase procedures and cancelled RFQ # 1244VW by posting a Statement of No Award.² Additionally, Coastal's procurement officer notified the offerors directly via email.³ Thereafter, Coastal amended its specifications and issued IFB # 1253VW for essentially the same work. The Flooring Connection did not submit a bid in response to the IFB. The Flooring Connection alleges that it was "excluded from the bidding process" because the bidding documents lacked instructions for the rebid. The CPO disagrees.

² Upon reviewing the quotations, Coastal realized the RFQ was ambiguous. The Scope of Work section required the contractor to sand and refinish hardwood floors no more than twice during the contract. The Award Criteria section stated "Award will be based on screening and recoating being performed three (3) times per year and sanding and refinishing being performed two times per year." The Bid Schedule stated "Price should reflect cost to perform service to floors one (1) time." (Ex. 1, third, fifth and sixth unnumbered pages) Coastal could have canceled the solicitation pursuant to Regulation 19-445.2065B(a) ("Invitations for bids may be cancelled after opening, but prior to award, when ... the procurement officer determines in writing that: (a) inadequate or ambiguous specifications were cited in the invitation...." Additionally, the RFQ itself provided that Coastal "reserves the right to reject any and all quotations and the cancel the solicitation." (Ex. 1, General Conditions) Its Statement of No Award refers to subsection (h) of the regulation ("for other reasons, cancellation is clearly in the best interest of the state.") The "other reasons" no doubt adverted to the quotations all exceeding the limit for small purchase procedures. That Coastal cited R. 19-445-2065B(h) in its Statement of No Award, rather than invoking either of the other alternatives available to it, is of no import to this analysis.

³ The Flooring Connection could have protested Coastal's cancellation of the RFQ within 10 days of the posting. Code Section 11-35-4210. The RFQ advised bidders "Any protest must be submitted in writing to the Chief Procurement Officer, Materials Management Office, 1201 Main Street, Suite 600, Columbia, SC 29201." (Ex. 1, Protest – MMO Address) The Flooring Connection filed no protest until April 27, 2012.

After Coastal cancelled the RFQ, Ms. Williams emailed the Statement of No Award to Mr. Guidera. Her message, sent the same day the notice was posted, stated “This solicitation will be rebid at a later date.” (Ex. 4) Coastal then issued an invitation for bids (IFB), posted it on the university’s website, and advertised it in South Carolina Business Opportunities (SCBO).⁴ These steps satisfied the notice requirements of the Code. Section 11-35-1520(3). Coastal even went a step further. Ms. Williams emailed the IFB to Mr. Guidera on April 9, 2012. Her message read:

The above Solicitation has been posted by Coastal Carolina University. The Solicitation is available on the Office of Procurement and Business Services web site and can be accessed from the following address: <http://www.coastal.edu/procurement/vendor/register.html> upon registration.

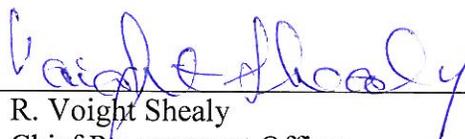
(Ex. 6) Despite the plain language of the IFB and Coastal’s extraordinary efforts to notify vendors, The Flooring Connection assumed that its quotation would be carried over and considered for award of the IFB. It never confirmed its misunderstanding with the procurement officer. Without so much as an inquiry to Coastal, The Flooring Connection determined not to submit a bid in response to IFB # 1253VW. On April 20, 2012, after evaluating the bids received, Coastal posted an intent to award to Palmetto Sports Floors. On April 27, 2012, The Flooring Connection filed a protest of the award.

DECISION

The Flooring Connection did not protest the Statement of No Award until twenty-two days after it had been posted, and after Coastal provided a copy to its owner. The protest of RFQ # 1244VW is untimely and is therefore dismissed. Respecting IFB # 1253VW, Code Section 11-35-4210(b) provides that the intended award or award of a contract must be protested within ten days of its posting. The protest remedy is limited to “actual bidders.” Although The Flooring

⁴ Mr. Guidera knew about the IFB. He acknowledged in the protest letter that the IFB was “advertised on the Coastal procurement site, South Carolina Business Opportunity newsletter, as well as other sources.”

Connection filed its protest within ten days of the posting of the Intent to Award, it did not submit a bid for that solicitation. Therefore, The Flooring Connection does not have standing to protest the award. *Appeal by Smith and Jones Distributing Co., Inc.*, Panel Case No. 1994-5; *see Appeal by Winyah Dispensary, Inc.*, Panel Case No. 1994-18 (“The Panel notes that whether Winyah received the IFB or not, Winyah was given notice of the IFB through the notice published in SCBO.”) The protest of the award in IFB # 1253VW is therefore 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).



To: Chief Procurement Officer at Materials Management Office

From: The Flooring Connection

Issue: Protest of bid results regarding bid solicitation #'s 1244VW and 1253VW at Coastal Carolina University

The Flooring Connection (TFC) would like to formally protest the results of the aforementioned bids. TFC recently submitted a bid package for bid solicitation # 1244VW refinishing of floors at Coastal Carolina University; that had been advertised on the universities' procurement site. On 4/5/12 we received a notice of non award that stated that "cancellation is clearly in the best interest of the state. " This document only stated the above, it in no way alluded that our bid had been opened, reviewed, destroyed, or would be marker as inadmissible on the rebid.

The solicitation was then reissued with identical wording, and no changes in scope of work under solicitation #1253VW. This solicitation was then advertised on the Coastal procurement site, South Carolina Business Opportunity newsletter, as well as other sources. While the apparent reason was not stated in the non award we felt as if our bid package would be included in the next round of bidding due to its responsiveness to conditions set forth in the bid documents.

The reason that we would like to protest the bid results is that we feel as if we were excluded from the bidding process due to the lack of procedures stated in bid documents referring to conditions of rebid. Our bid package was complete with all necessary documents; dropped and time stamped when received. Neither the notice of non-award nor the section of South Carolina code, which was listed as a reason for cancellation, contained any wording that illustrates that our bid would need to be reaffirmed or resubmitted in order to be included. Since the original bid was cancelled and our bid package was not returned to us, nor told that it our numbers had been deemed inadmissible, nor were we called or informed of the need to resubmit the bid, we feel that the protest is warranted.

We would like to formally protest the bid results; based on the fact that we were excluded from the bidding process; due to the fact that the bid documents lacked instructions for rebid procedure and/or the cancellation of bids. We would ask that the project be opened for an additional bid so that we may have the chance to participate as we feel we were not properly informed of the need to resubmit in any of the communications we have received.

Sincerely,

Joseph Christopher Guidera