

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

ConServ Flag Company

Trident Technical College
RFQ No. 042012-485-27505
Door Mats for TTC

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2012-120

POSTING DATE: May 30, 2012

MAILING DATE: May 30, 2012

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from ConServ Flag Company (ConServ), which was sent to the MMO protest email address on May 17, 2012. With this Invitation for Bids, styled as "RFQ," Trident Technical College (TTC) solicits bids for door mats. According to the agency's procurement officer, TTC found the lowest bidder non-responsive. ConServ was the next lowest bidder. In response to TTC's inquiry, ConServ disclosed that its mats were backed with vinyl, rather than the nitrile rubber backing specified in the RFQ. TTC accordingly found ConServ's offer non-responsive and awarded the contract to the next lowest bidder. ConServ challenges the award. Based on the procurement file and the applicable law, the CPO has conducted an administrative review without a hearing.

NATURE OF PROTEST

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

FINDINGS OF FACT

In an email message to the CPO, TTC's procurement officer represented that the total potential value of the solicitation was estimated to be \$26,000. The awarded amount was \$26,514.05. None of the responses to the RFQ exceeded \$50,000. In response, ConServ acknowledged that the value of the procurement is less than \$50,000, stating "we agree with the amount stated [in TTC's message.]"

CONCLUSIONS OF LAW

The South Carolina Consolidated Procurement Code (Code) grants actual bidders the right to protest awards made by the State. Section 11-35-4210(1)(b) of the Code reads in relevant part,

Any actual bidder... who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, whichever is earlier, is posted in accordance with this code....

However, Section 11-35-4210(1)(d) limits this right by stating, "The rights and remedies granted by...Section 11-35-4410(1)(b) are *not available for contracts with an actual or potential value of up to fifty thousand dollars.*" (Emphasis added.)

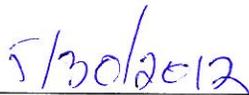
In this matter, the RFQ offered bidders a contract for specified quantities of floor mats with certain characteristics. (Ex. 1, Bidding Schedule, pp. 16-20) The lowest bid deemed responsive by TTC was \$26,514.05, and TTC awarded the contract for this amount. (Ex. 2) No bid, including ConServ's, exceeded \$50,000.

DETERMINATION

Since the total award of \$26,514.05 is less than \$50,000, the CPO has no authority to hear this matter. Therefore, 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: Thursday, May 17, 2012 11:36 AM
To: _MMO - Procurement; Shealy, Voight; Skinner, Gail
Subject: FW: Protest on Mat award

From: Jason Assad[SMTP:JASON@CONSERVFLAG.COM]
Sent: Thursday, May 17, 2012 11:36:20 AM
To: Protest-MMO
Cc: robert.tyner@tridenttech.edu
Subject: Protest on Mat award
Auto forwarded by a Rule

Mr. Voight Shealy

This email is being filed as a formal protest to solicitation document for RFQ # 042012-485-27505-04/30/12 titled " Door Mats for TTC." The bid that our company ConServ Flag Company submitted was for the identical product awarded to a different vendor for a higher price. We are the responsible low bidder. Upon request we furnished all technical data for the mats quoted as well as several phone conversations asking if anything else was need or had to be verified on the technical aspects of the Anderson Mats we bid. We feel this award was erroneous and needs to be reversed and awarded to ConServ Flag Company as the responsible low bidder. Thank you for your urgent attention to this matter.

ConServ Flag Company
Jason D. Assad
Sales Director
www.conservflag.com
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Fax: 308-254-2419

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