

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

In the Matter of Protest of:

Caldwell & Gregory

Materials Management Office
RFP # 5400006237

Laundry Vending Services for
South Carolina State University

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

CASE NO.: 2014-101

POSTING DATE: January 30, 2014

MAILING DATE: January 30, 2014

This matter is before the Chief Procurement Officer (CPO) pursuant to a protest filed January 2, 2014 by Caldwell & Gregory under authority of South Carolina Code Section 11-35-4210. With this request for proposals (RFP), the Materials Management Office (MMO) attempts to procure laundry vending services for South Carolina State University. After evaluating the proposals received, on December 23, 2013, MMO posted its Intent to Award to MacGray Services, Inc. Caldwell & Gregory protested MMO's Intent to Award.

As the issues to be decided are clear, the CPO makes this decision without a hearing, based upon an administrative review of the protest letter [Ex. 1 attached], MMO's Intent to Award [Ex. 2 attached], and the procurement file.

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 December 23, 2013, MMO posted its Intent to Award to MacGray Services, Inc. with a total potential value of \$127,920.00. [Ex. 2] Per the Intent to Award, unless suspended due to receipt of a protest, the Intent to Award would become an Award effective 8:00AM, January 3, 2014.

2. On January 2, 2014 at 6:19PM, Caldwell & Gregory emailed its protest with Chris Manos, MMO Procurement Manager. [Ex. 1]

CONCLUSIONS OF LAW

Regarding award of a RFP, the Consolidated Procurement Code reads,

Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals, unless the procurement officer determines to utilize one of the options provided in Section 11-35-1530(8). The contract file must contain the basis on which the award is made and must be sufficient to satisfy external audit. Procedures and requirements for the notification of intent to award the contract must be the same as those provided in Section 11-35-1520(10).

[11-35-1530(9)]

The section referenced above requires, “For contracts with a total or potential value of one hundred thousand dollars or greater, notice of an intended award of a contract must be given by posting the notice for ten days before entering into a contract and must be sent to all bidders responding to the solicitation on the same day that the notice is posted in accordance with this section.” [11-35-1520(10)]

The Code authorizes actual bidders the privilege of protesting said award within the Intent to Award period. It reads:

Any actual bidder, offeror, contractor, or subcontractor 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; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

[Section 11-35-4210(1)(b)]

(b) 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).

[Section 11-35-4210(2)(b)]

Caldwell & Gregory emailed its protest to the Procurement Manager at 6:19PM, January 2, 2014, after the close of business on the tenth day following MMO's posted Intent to Award.

The Procurement Review Panel has ruled previously, "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).

Caldwell & Gregory did not file its protest by 5:00 PM, the close of business, on the tenth and final day allowed for filing. Therefore, its protest was untimely filed.

DETERMINATION

The South Carolina Procurement Review Panel ("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 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

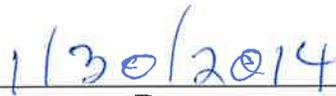
vendor for vital goods and services without the danger of being liable to another vendor.

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

For the reasons stated above, the protest of Caldwell & Gregory 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 June 2013)

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: <http://procurement.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 108.1 of the 2013 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 financial hardship, the party shall submit a completed Request for Filing Fee Waiver form at the same time the request for review is filed. The Request for Filing Fee Waiver form is attached to this Decision. If the filing fee is not waived, the party must pay the filing fee within fifteen days of the date of receipt of the order denying waiver of the filing fee. Requests for administrative review will not be accepted unless accompanied by the filing fee or a completed Request for Filing Fee Waiver form at the time of filing." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, business entities organized and registered as corporations, limited liability companies, and limited partnerships must be represented by 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); and *Protest of PC&C Enterprises, LLC*, Case No. 2012-1 (Proc. Rev. Panel April 2, 2012). However, individuals and those operating as an individual doing business under a trade name may proceed without counsel, if desired.

**South Carolina Procurement Review Panel
Request for Filing Fee Waiver
1105 Pendleton Street, Suite 202, Columbia, SC 29201**

Name of Requestor

Address

City

State

Zip

Business Phone

1. What is your/your company's monthly income? _____

2. What are your/your company's monthly expenses? _____

3. List any other circumstances which you think affect your/your company's ability to pay the filing fee:

To the best of my knowledge, the information above is true and accurate. I have made no attempt to misrepresent my/my company's financial condition. I hereby request that the filing fee for requesting administrative review be waived.

Sworn to before me this

_____ day of _____, 20_____

Notary Public of South Carolina

Requestor/Appellant

My Commission expires: _____

For official use only: _____ Fee Waived _____ Waiver Denied

Chairman or Vice Chairman, SC Procurement Review Panel

This _____ day of _____, 20_____

Columbia, South Carolina

NOTE: If your filing fee request is denied, you will be expected to pay the filing fee within fifteen (15) days of the date of receipt of the order denying the waiver.

Manos, Chris

From: mike hatchell <washerguy@earthlink.net>
Sent: Thursday, January 02, 2014 6:19 PM
To: Manos, Chris
Subject: PROTEST RE: 5400006237, from Caldwell & Gregory

Hello Chris,

Respectfully submitted, Caldwell & Gregory protests the award of RFP 5400006237 to MacGray Services for the following reasons. Please see the link below.

<http://phx.corporate-ir.net/phoenix.zhtml?c=63154&p=irol-newsArticle&ID=1864442&highlight=>

1. The document referenced above is a press release from the MacGray company announcing the purchase of their company by CSC Serviceworks, who does business under the names "Coinmach Corporation" and "ASI Campus Laundry Solutions". It is clearly stated that (January of 2014) this transaction will be taking place in the very near future (January of 2014). Although information on companies responding to this RFP has not been released by the state, we assume that both ASI and MacGray have submitted a proposal in response to this RFP as they have done elsewhere. Simultaneously, the two companies have been working closely together on the purchase of MacGray by ASI's parent company. In our view, the potential for collusion is too great to allow these two companies to submit two separate proposals, considering that they have been working closely together for a considerable period of time on a merger/acquisition of MacGray by Coinmach/ASI.

2. The current laundry vendor and holder of the laundry contract at South Carolina State is ASI/Coinmach. The decision to award this contract to MacGray will result in a transfer of this contract from MacGray back to ASI/Coinmach almost immediately, most likely before the new washers and dryers are even installed. This contradicts the wishes of the committee to change from their current vendor. The current condition of the laundry equipment in the residence halls is indicative of the need for change. See attached picture as just one example of the current condition of ASI's washers and dryers on campus.

In consideration of the current state of transition with two of the competing vendors (#2 above), and their attempt to use the impending sale to their advantage by submitting two proposals (#1 above), Caldwell & Gregory respectfully requests the following remedies be considered:

- 1) Disqualification of both MacGray and ASI/Coinmach for the reasons specified above, and/or
- 2) Rebid the agreement in 90 days, after the transaction between the two companies is completed, and/or
- 3) award this contract to Caldwell & Gregory.

If you would, please confirm that we have protested in accordance with all South Carolina procurement rules and regulations.

Thanks very much,

Michael Hatchell

Caldwell & Gregory

800-286-5622 (direct)

-----Original Message-----

From: "Manos, Chris"
Sent: Dec 30, 2013 4:31 PM
To: mike hatchell
Subject: RE: 5400006237

I am sorry but I cannot advise someone protest matters other than to reference the clause.

SECTION 11-35-4210. Right to protest; procedure; duty and authority to attempt to settle; administrative review; stay of procurement.

(1) Right to Protest; Exclusive Remedy.

(a) 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. An Invitation for Bids or Request for Proposals or other solicitation document, not including an amendment to it, is considered to have been issued on the date required notice of the issuance is given in accordance with this code.

(b) Any actual bidder, offeror, contractor, or subcontractor 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; except that a matter that could have been raised pursuant to (a) as a protest of the solicitation may not be raised as a protest of the award or intended award of a contract.

(c) The rights and remedies granted in this article to bidders, offerors, contractors, or subcontractors, either actual or prospective, are to the exclusion of all other rights and remedies of the bidders, offerors, contractors, or subcontractors against the State.

(d) The rights and remedies granted by subsection (1) and Section 11-35-4410(1)(b) are not available for contracts with an actual or potential value of up to fifty thousand dollars.

(2) Protest Procedure. (a) A protest pursuant to subsection (1)(a) must be in writing, filed with the appropriate chief procurement officer, and set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided. The protest must be received by the appropriate chief procurement officer within the time provided in subsection (1).

(b) 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). At any time after filing a protest, but no later than fifteen days after the date 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). A protest, including amendments, 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.

(3) Duty and Authority to Attempt to Settle Protests. Before commencement of an administrative review as provided in subsection (4), the appropriate chief procurement officer, the head of the purchasing agency, or their designees may attempt to settle by mutual agreement a protest of an aggrieved bidder, offeror, contractor, or subcontractor, actual or prospective, concerning the solicitation or award of the contract. The appropriate chief procurement officer, or his designee has the authority to approve any settlement reached by mutual agreement.

(4) Administrative Review and Decision. If in the opinion of the appropriate chief procurement officer, after reasonable attempt, a protest cannot be settled by mutual agreement, the appropriate chief procurement officer shall conduct promptly an administrative review. The appropriate chief procurement officer or his designee shall commence the administrative review no later than fifteen business days after the deadline for receipt of a protest has expired and shall issue a decision in writing within ten days of completion of the review. The decision must state the reasons for the action taken.

(5) Notice of Decision. A copy of the decision under subsection (4) along with a statement of appeal rights pursuant to Section 11-35-4210(6) must be mailed or otherwise furnished immediately to the protestant and other party intervening. The appropriate chief procurement officer, or his designee, also shall post a copy of the decision at a date and place communicated to all parties participating in the administrative review, and the posted decision must indicate the date of posting on its face and must be accompanied by a statement of the right to appeal provided in Section 11-35-4210(6).

(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.

(7) Automatic Stay of Procurement During Protests. In the event of a timely protest pursuant to subsection (1), the State shall not proceed further with the solicitation or award of the contract until ten days after a decision is posted by the appropriate chief procurement officer, or, in the event of timely appeal to the Procurement Review Panel, until a decision is rendered by the panel except that solicitation or award of a protested contract is not stayed if the appropriate chief procurement officer, after consultation with the head of the using agency, makes a written determination that the solicitation or award of the contract without further delay is necessary to protect the best interests of the State.

(8) Notice of Chief Procurement Officer Address. Notice of the address of the appropriate chief procurement officer must be included in every notice of an intended award and in every invitation for bids, request for proposals, or other type solicitation.

From: mike hatchell [mailto:washerguy@earthlink.net]
Sent: Monday, December 30, 2013 4:08 PM
To: Manos, Chris
Subject: RE: 5400006237

Chris,

Thanks for your message. Are you aware that MacGray has been bought by Coinmach, who is the current laundry vendor at South Carolina State University? The purchase is set to close in the very near future. The contract is essentially being awarded to the same company who currently provides the laundry equipment and service at South Carolina State. Is this legitimate grounds for protest? Please let me know what you think.

Thanks,

Mike Hatchell

Caldwell & Gregory

800-286-5622 (direct)
-----Original Message-----
From: "Manos, Chris"
Sent: Dec 23, 2013 12:26 PM
To: "washerguy@earthlink.net"
Subject: RE: 5400006237

Award has posted as attached.

From: washerguy@earthlink.net [mailto:washerguy@earthlink.net]
Sent: Monday, September 23, 2013 9:20 AM
To: Manos, Chris
Subject: 5400006237

Hello from Caldwell & Gregory,
Can you provide us with any other information on the pending award for the bid number referenced above?
Thanks very much,
Mike Hatchell
Caldwell & Gregory
800-286-5622

STATE OF SOUTH CAROLINA
MATERIALS MANAGEMENT OFFICE
CAPITAL CENTER
1201 MAIN STREET, SUITE 600
COLUMBIA SC 29201

Posting Date: December 23, 2013

INTENT TO AWARD

Solicitation: 5400006237

Description: LAUNDRY VENDING SERVICES FOR SCSU

Agency: SOUTH CAROLINA STATE UNIVERSITY

The State intends to award contract(s) noted below. Unless otherwise suspended or canceled, this document becomes the final Statement of Award effective **8:00 A.M., January 3, 2014**. Unless otherwise provided in the solicitation, the final statement of award serves as acceptance of your offer.

Contractor should not perform work on or incur any costs associated with the contract prior to the effective date of the contract. Contractor should not perform any work prior to the receipt of a purchase order from the using governmental unit. The State assumes no liability for any expenses incurred prior to the effective date of the contract and issuance of a purchase order.

Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. [Section 11-35- 4210]

PROTEST - CPO ADDRESS - MMO: Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing

(a) by email to protest-mmo@mmo.sc.gov ,

(b) by facsimile at 803-737-0639 , or

(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

Contract Number: 4400007664

Awarded To: MAC GRAY SERVICES INC
404 WYMAN STREET, SUITE 400
WALTHAM MA 02451

Total Potential Value: \$ 127,920.00

Maximum Contract Period: January 30, 2014 through January 29, 2019

Item	Description	Yearly Price
00010	Laundry Vending Services	\$ 25,584.00

Procurement Officer
Chris Manos, CPPB