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THE DIVISION OF PROCUREMENT SERVICES

DELBERT H. SINGLETON, JR.
DIVISION DIRECTOR
(803) 734-8018

MICHAEL B. SPICER
INFORMATION TECHNOLOGY MANAGEMENT OFFICER
(803) 737-0600
FAX: (803) 737-0639

Written Determination

Matter of: Cancellation of Award to Bob Barker Company Inc.

Case No.: 2017-141

Posting Date: April 27, 2017

Contracting Entity: South Carolina Department of Corrections

Solicitation No.: 5400012911

Description: Riot Helmets

This matter is before the Chief Procurement Officer for Information Technology¹ (CPO) pursuant to a request from the South Carolina Department of Corrections (DOC) [Ex. 1] under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), and Regulation 19-445.2085(C) to cancel an award to Bob Barker Company Inc. to provide Riot Helmets for DOC, prior to performance due to an administrative error in determining the lowest responsive and responsible bidder discovered after award but prior to performance.

BASIS FOR THE REQUEST

DOC issued solicitation 5400012911 on February 19, 2017 for riot helmets. Bids from Lawman's Distribution and Bob Barker were opened on March 9, 2017. DOC issued a statement of award for \$14,328.00 to Bob Barker Company, Inc. on March 16, 2017. On March 21, 2017, DOC

¹ The Materials Management Officer delegated the administrative review of this request to the Chief Procurement Officer for Information Technology.

received an inquiry from Sirchie Acquisition Company, LLC as to why it was not awarded the bid, since its price was lower than that offered by Bob Barker. Sirchie provided evidence that its bid was delivered and accepted by DOC on March 7, 2017. DOC determined that Sirchie's bid and samples were misfiled by a new employee.

Regulation 19-445-2070 requires the rejection of bids received after the designated date and time with the following exception:

19-445.2070(G). Exceptions to Rejection Procedures.

Any bid received after the procurement officer of the governmental body or his designee has declared that the time set for bid opening has arrived, shall be rejected unless the bid had been delivered to the location specified in the solicitation or the governmental bodies' mail room which services that location prior to the bid opening.

(emphasis added)

DOC correctly accepted Sirchie's bid and determined it the lowest responsive and responsible bidder. Having confirmed that Bob Barker has not begun performance, DOC requests cancellation of the award in accordance with Regulation 19-445.2085(C):

After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing that:

(7) Administrative error of the purchasing agency discovered prior to performance, or

(8) For other reasons, cancellation is clearly in the best interest of the State.

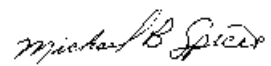
DETERMINATION

For the reasons stated above, the award to Bob Barker Company Inc. is cancelled under Regulation 19-445.2085(C). The solicitation is returned to the Department with directions to proceed in accordance with the Code.

Written Determination, page 3

Case No. 2017-141

April 27, 2017

A handwritten signature in cursive script that reads "Michael B. Spicer".

Michael B. Spicer
Chief Procurement Officer for Information
Technology

Exhibit 1



HENRY McMASTER, Governor
BRYAN P. STIRLING, Director

April 4, 2017

Mike Spicer
Materials Management Office
SC Budget and Control Board
1200 Senate Street
Columbia, SC 29201

Re: Cancellation of Award for Riot Helmets

Dear Mr. Spicer,

Please grant SCDC Purchasing Department the authority to cancel an Award to Bob Barker for Solicitation 5400012911 Riot Helmets. SCDC is requesting to cancel this Award that was made in error under Section 11-35-1520-Section 7 Cancellation of Award and Regulation 19-445.2085 Cancellation Award Prior to Performance.

At 10:00 a.m., the bids were open and read aloud in order for the bids to be tabulated. After the bids were opened, stamped in, tabulated, preferences applied and samples were verified all bid folders were assembled in an orderly manner and returned to the buyers.

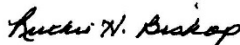
Once the buyers had completed the evaluation of their bids and the samples, the bid was returned to the Clerical Staff in order to complete the Award Statement. The Award for the Riot Helmets, according to all tabulations, went to Bob Barker who had the lowest bid. The Award was posted on March 16, and a purchase order created and issued.

On March 21, Dan O'Neil with the Sirchie Acquisition Company, LLC, called and spoke to Ruthie Bishop, inquiring as to why he was not awarded the bid, since his price was lower than that offered by Bob Barker. Ms. Bishop explained to Mr. O'Neil that SCDC did not receive a bid from Sirchie. Mr. O'Neil stated that had a tracking receipt showing were someone within SCDC signed for the bid. After receiving tracking information on both the sample and the bid package, Ms. Bishop had the Clerical Staff look for the missing bid. The tracking information provided revealed that the package had been signed for by a newer associate, who may not have been fully aware of exactly what she had signed for, and thus placed it in the wrong spot. However, Mr. O'Neil's bid package was located stacked in a corner among samples for other bids - it was still sealed. The box was brought to my Office, where it was confirmed that the bid was received in SCDC Purchasing Department by the closing date and time stated on Solicitation 5400012911. At that time it was determined that SCDC could accept the bid therefore it was added to the tabulation sheet. Once the tabulation was completed and the preferences had been applied it was determined that Sirchie was indeed the low bidder and that the Award should have been made to Sirchie and not Bob Barker.


Therefore, SCDC is requesting the Award for Solicitation 5400012911 made to Bob Barker be cancelled and the Award be reissued to Sirchie who is the low bidder. I have attached the 2 bids in question, along with the tabulation sheet and preference sheet. Please let me know if need any additional information.

Your consideration with this would be greatly appreciated.

Sincerely,



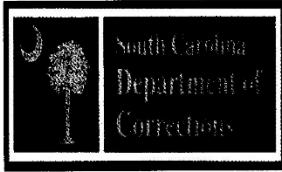
Ruthie H. Bishop, CPPB
Division Director of Procurement Services
South Carolina Department of Corrections

	<p>State of South Carolina</p> <p>AWARD EXTENSION 1</p>	<p>Solicitation Number: 5400012911 Date: 03/14/2017 Procurement Officer: Brittany Driggers Phone: (803)896-1383 E-Mail Address: Driggers.brittany@doc.sc.gov Address: 4420 Broad River Road Columbia, SC 29210</p>
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DESCRIPTION: Riot Helmets
USING GOVERNMENTAL UNIT: **SC Department of Corrections**

In accordance with The Budget and control Board Regulations, Section **19-445.2090 (B)**, this Extension of Award Posting serves as official notice that a longer review time is required. The new award posting date is **extended until further notice.**

March 16, 2017



South Carolina Department of Corrections
4420 Broad River Rd
Columbia, SC 29210

Posting Date: March 16, 2017

Solicitation : 5400012911
Issue Date : 02/20/2017
Opening Date : 03/09/2017 @ 10 AM
Description : Riot Helmets

Initial Contract Period: 03/22/2017 – 03/21/2017
Potential Contract Period: 03/22/2017 – 03/21/2022

Awarded To: **Bob Barker Company, Inc.**
134 N. Main Street
Fuquay-Varina, NC 27526
800-334-9880
BIDNOTICES@BOBBARKER.COM
Vendor 7000024962

Evaluated Amount: \$14,328.00
Awarded Amount: \$14,328.00
Potential Contract Amount: \$71,625.00

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0001	80.000	each	\$102.50	\$8,200.00
Product Catg.: 68012 - Belts Cases Holsters Scabbards etc.				
Item Description: SML-Premier Crown 906 series Riot Helmet w/clear face shield and neck protector				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0002	20.000	each	\$102.50	\$2,050.00
Product Catg.: 68012 - Belts Cases Holsters Scabbards etc.				
Item Description: XL-Premier Crown 906 series Riot Helmet w/clear face shield and neck protector				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0003	20.000	each	\$102.50	\$2,050.00
Product Catg.: 68012 - Belts Cases Holsters Scabbards etc.				
Item Description: JUMBO-Premier Crown 906 series Riot Helmet w/clear face shield and neck protector				

Line Number	Quantity	Unit of Measure	Unit Price	Extended Price
0004	120.000	each	\$16.90	\$2,028.00
Product Catg.: 68012 - Belts Cases Holsters Scabbards etc.				
Item Description: Nape pad (Neck protector)				

Buyer: Ruthie Bishop
Director of Procurement: Ruthie H. Bishop, CPPB

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Written Determinations Appeal Notice (Revised November 2016)

The South Carolina Procurement Code, in Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created the South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine de novo:
(b) requests for review of other *written determinations*, decisions, *policies*, and *procedures* arising from or concerning the procurement of supplies, services, information technology, or construction procured in accordance with the provisions of this code and the ensuing regulations; except that a matter which could have been brought before the chief procurement officers in a timely and appropriate manner pursuant to Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, must not be the subject of review under this paragraph. Requests for review pursuant to this paragraph must be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of the written determinations, decisions, policies, and procedures.

(Emphasis added.) See generally *Protest of Three Rivers Solid Waste Authority by Chambers Development Co., Inc.*, Case Nos. 1996-4 & 1996-5, *Protest of Charleston County School District*, Case No. 1985-5, *Charleston County School Dist. v. Leatherman*, 295 S.C. 264, 368 S.E.2d 76 (Ct.App.1988).

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 111.1 of the 2016 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
1205 Pendleton Street, Suite 473, 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.