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## Protest Decision

**Matter of:** CDR Maguire Inc.

**Case No.:** 2017-158

**Posting Date:** July 27, 2017

**Contracting Entity:** Emergency Management Division

**Solicitation No.:** 5400013442

**Description:** Emergency Recovery Support Personnel for the Adjutant Generals Office- Emergency Management Division

### DIGEST

Protest alleging improper release of procurement information is denied. CDR Maguire's (CDR) letter of protest is included by reference. [Attachment 1]

### AUTHORITY

The Chief Procurement Officer<sup>1</sup> conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on a review of procurement documents and applicable law and precedents.

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<sup>1</sup> The Materials Management Officer delegated the administrative review of this protest to the Chief Procurement Officer for Information Technology.

## **BACKGROUND**

<i>Event</i>	<i>Date</i>
Solicitation 5400013442 Issued	05/02/2017
Amendment 1 Issued	05/11/2017
Intent to Award Posted	06/20/2017
Protest by Tidal Basin Received	06/27/2017
Protest by CDR Mcguire Received	06/29/2017

This is the second Request for Proposals issued by the State Fiscal Accountability Authority (SFAA) on behalf of the Emergency Management Division (EMD) to acquire Recovery Support Personnel to assist EMD in recovery from hazards or events. The first solicitation (5400012547) was issued on December 21, 2016. Proposals were received from nine (9) offerors. One of the nine offerors, Adjusters International, Inc., (Adjusters), submitted an online response that, due to an administrative error, was not considered by the evaluation committee. After awards were posted to CDR Mcguire, Inc. (CDR), Hagerty Consulting, Inc., and MB3, Inc., unsuccessful offeror Tetra Tech, Inc. requested and received evaluator scoring information and redacted proposals from the successful offerors under the Freedom of Information Act. (FOIA) Adjusters followed Tetra's request with a similar request, which led to SFAA's discovery that Adjusters' proposal had not been evaluated. At the request of the procurement officer, the CPO canceled all three awards under Regulation 19-445.2085(C). On April 26, 2017, the procurement manager emailed all offerors that the award was cancelled and included copies of the Determination Canceling the Award, the Vendor Response form, the Composite Score sheet, the Intent to Award, the Award Suspension, and the Cancellation of Award. All subsequent requests for additional documents were denied.

The second solicitation (5400013442) was issued on May 2, 2017. Tetra Tech, the only offeror from the previous solicitation to received competing redacted proposals, did not submit a proposal in response to the second solicitation. Proposals received were evaluated by a different evaluation committee and Intents to Award were posted to Hagerty Consulting, Inc., Atkins North America, Inc., and MB3, Inc. on June 20, 2017. CDR protests that irregularities associated with the first solicitation created an unfair competitive advantage for certain bidders,

disadvantaged CDR, violated the Code and Regulations as applied to the second solicitation and denied it an award from the second solicitation.

## **ANALYSIS**

CDR first argues that Adjuster's lost proposal was non responsive to the requirements of the original solicitation and consequently did not warrant an evaluation, the lack of which was used to justify cancellation of the awards from the first solicitation. This claim expressly challenges the cancellation, not the awards posted after the second solicitation.

The cancellation of the first solicitation was effectuated by a written determination by a Chief Procurement Officer under S.C. Code Ann. §§11-35-1520(7) and (10) and Regulation 19-445.2085. (Attachment 2) The determination was posted on April 25, 2017 and included a Statement of Right to Further Administrative Review under Section 11-35-4410 which authorizes any aggrieved party to appeal the CPO's written determination to the South Carolina Procurement Review Panel within fifteen (15) days of the date of posting. The fifteen day time limit is statutory and cannot be waived. By its own acknowledgement in its letter of protest, CDR received email notification of the cancellation on April 26, 2017. It did not file this protest for over two months after receipt of the cancelation, well beyond the statutory time limits. This issue of protest is dismissed as untimely.

CDR next argues that:

The release of the Composite Score sheet with MMO's knowledge that the solicitation was going to be re-advertised coupled with the MMO's release of CDR's proposal in effect created an unfair advantage for certain proposers and inequitable treatment of CDR in violation of South Carolina's Procurement Code and South Carolina's Procurement Regulation 19-445.2010 (c) because of its disclosure of source selection information during the solicitation process.

Tetra Tech, Inc. requested and received evaluator scoring information and redacted proposals of the successful offerors under the Freedom of Information Act after award but prior to the discovery that Adjuster's proposal had not been evaluated and cancellation of the awards. This was proper and in accordance with Regulation 19-445.2010(A):

If requested in writing by an actual offeror prior to final award, the responsible procurement officer shall, within ten days of the receipt of any such request, make documents directly related to the procurement activity not otherwise exempt from disclosure available for inspection at an office of the responsible procurement officer.

Once it was discovered that Adjusters proposal was not evaluated and the determination was made to cancel the awards on April 25, 2017, the situation changed from an awarded contract to a cancellation of the solicitation without award. CDR complains that on May 15, 2017, its FOIA request for competing proposals from the first solicitation was denied because “all response documents are incidental to a proposed contractual arrangement and therefore exempt from disclosure under FOIA”. SFAA’s refusal, after the awards were canceled, to provide copies of proposals received in response to the first solicitation was correct, but for the wrong reason.

After the procurement officer produced the documents to Tetra Tech, the first solicitation, and all three of the awards, were cancelled. The cancelation effectively meant no award was made.

Section 11-35-410(C) provides:

For all documents submitted in response or with regard to a solicitation or other request, the documents need not be disclosed if an award is not made.

Regulation 19-445.2097(D) provides that:

If a request for proposals is canceled, proposals shall be returned to the offerors.

The denial of CDR’s FOIA request was appropriate.

With the first solicitation cancelled, all bidders responding to the first solicitation received an email on April 26, 2017, announcing the cancellation and included copies of the following documents:

- Determination Cancelling Award
- Vendor Response Form
- Composite Score Sheet
- Email from Adjusters International
- Award Suspension
- Cancellation of Award Request
- Award Cancellation

CDR argues that the release of its redacted proposal to Tetra Tech and the release of the Composite Score sheet to all bidders created an unfair competitive advantage for certain proposers and inequitable treatment of CDR in violation of the Code and Regulation 19-445.2010(C). The Regulation provides that:

19-445.2010(C) Prior to the issuance of an award or notification of intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer, unless otherwise authorized in writing by the responsible procurement officer. "Source selection information" means any of the following information that is related to or involved in the evaluation of an offer (e.g., bid or proposal) to enter into a procurement contract, if that information has not been previously made available to the public or disclosed publicly: (1) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices, (2) source selection plans, (3) technical evaluation plans, (4) technical evaluations of proposals, (5) cost or price evaluations of proposals, (6) information regarding which proposals are determined to be reasonably susceptible of being selected for award, (7) rankings of responses, proposals, or competitors, (8) reports, evaluations of source selection committees or evaluations panels, (9) other information based on a case-by-case determination by the procurement officer that its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

(emphasis added)

The documents were products of the first solicitation. The awards were cancelled, the solicitation was cancelled and there was no acquisition in progress at the time the documents were released. The second solicitation was not issued until May 2, 2017. There was no violation of the Regulation.<sup>2</sup>

The composite score sheet showed each evaluators' score, for each evaluation criteria, for each bidder, and the resulting totals. It did not provide insight into the evaluators' subjective analysis of the proposals leading to the raw scores. All bidders received the same information. Tetra Tech

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<sup>2</sup> Besides, Tetra Tech did not offer in response to the second solicitation, and there is no claim that any other offeror obtained copies of CDR's initial proposal. Accordingly there is no unfair competitive advantage resulting from the release of documents to Tetra Tech.

was the only bidder to receive redacted proposals from the first solicitation and it did not submit a proposal in response to the second solicitation. Without more detailed information about the scoring or a wider distribution of the redacted proposals from the first solicitation, it is difficult to understand how the release of CDR's proposal and the composite score sheet provided any significant advantage to the other bidders or inequitable treatment to CDR.

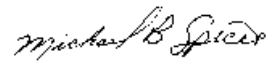
Finally, CDR questions how the two solicitations can result in different outcomes. CDR attempts to treat the two solicitations as a single event. However this position is not supported by the Code. Each solicitation is a separate event. Proposals received in response to the second solicitation were evaluated and ranked by a different evaluation committee. Due to the subjective nature of the evaluation of responses to a Request for Proposals it is understandable that the results could be different. Section 11-35-2410 provides that the decision of the evaluation committee is final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law. CDR makes no such allegation. It is CDR's burden to prove that the evaluators of the second solicitation conducted their evaluation in violation of the Code or that the proposals were not fairly considered. CDR failed to make this showing and this issue of protest is denied.

## **DECISION**

While there were two solicitations for the same services, each solicitation stands alone. It is unfortunate that any information received in response to the first solicitation was released under FOIA since the solicitation was cancelled without award. However the FOIA release to Tetra Tech was in accordance with the Code and Regulations. Once the situation changed from an awarded contract to a cancellation without award, the procurement officer's refusal to make additional FOIA releases was in accordance with the Code. The release of the Composite Score sheet to all bidders did not disadvantage CDR or give the other bidders an unfair competitive advantage. Due to the subjective nature of the RFP process, the fact that a second evaluation committee reached a different result is not conclusive proof of an unfair evaluation or violation of the Code. For these reasons, the protest of CDR Maguire Inc. is denied.

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Case No. 2017-158  
July 27, 2017

For the Materials Management Office

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

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Michael B. Spicer  
Chief Procurement Officer

## **Attachment 1**

Via Electronic Mail and United Parcel Services

Chief Procurement Officer

June 29, 2017

Materials Management Office

1201 Main Street, Suite 600

Columbia, SC 29201

Re: Bid Protest of CDR Maguire Inc.

Adjutant Generals Office - Emergency Recovery Support Personnel - Emergency  
Management Division

Solicitation #5400012547

Solicitation #5400013442

Contract #4400016416

Dear Sir or Madam,

Please accept this protest on behalf of CDR Maguire Inc. (“CDR”) of the cancellation of an Intent to Award Solicitation #5400012547 on April 26, 2017, the rebid of this solicitation in Solicitation #5400013442 on May 2, 2017 and the award of contract #4400016416 on June 20, 2017 to Atkins North America Inc. (“Atkins”) Hagerty Consulting Inc. (“Hagerty”) and MB3 Inc. (“MB3”). This protest is filed pursuant to 11-35-4210 (1) (b), which provides in pertinent part:

“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 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.”

The posting date of the intent to award of Solicitation 5400013442/ Contract 4400016416 was June 20, 2017. CDR is within the ten (10) day period and the protest is timely filed.

Chronology of Events



On or about December 21, 2016, the MMO issued the first Solicitation #540001254 for proposals for Emergency Recovery Support Personnel for the Adjutant Generals Office-Emergency Management Division. On the Solicitation Cover Letter, the means of response to the Solicitation provided "NUMBER OF COPIES TO BE SUBMITTED: One (1) Original Hardcopy Each Technical & Price Proposal marked "Original", Four (4) Hardcopies marked "Copy"; One (1) Electronic Media Copy of Technical & Price Proposal marked "Copy" and One (1) Redacted Copy marked "Redacted" via electronic media". On February 16, 2017, CDR submitted its proposal via Federal Express which delivery was confirmed and electronically. On April 14, 2017, the MMO posted a Notice of Intent to award contracts to CDR, Hagerty and MB3 with an effective date of April 25, 2017. Subsequent to the Notice of Intent, on April 17, 2017, Tetra-Tech, an unsuccessful proposer, made a FOIA request for "Bid Tabulation Sheet/Scoring Sheets (and any evaluator notes if available) pricing information submitted by the proposers, copy of the winning proposals" to the MMO. Per MMO's request, CDR provided redacted copies of its Technical and Price Proposal via a drop box email link which receipt was acknowledged on April 19, 2017 and presumably provided to Tetra Tech, along with the other information requested by Tetra Tech. On April 26, 2017, however, Sheila Willis emailed CDR and all other proposers that the award was cancelled and included a list of attached documents including the Determination Canceling the Award, the Vendor Response form, the Composite Score sheet, the Intend to Award, Email from Adjusters International, the Award Suspension, the Cancellation of Award and Award Cancellation. On May 2, 2017, the MMO issued a second Solicitation for proposals for the same services. CDR submitted a Proposal in response to this second Solicitation. On June 20, 2017, the MMO issued the Intent to Award a Contract to Atkins, Hagerty and MB3. CDR, which had placed second in the first Solicitation, was not awarded a contract.

### Basis of Protest

CDR protests MMO's cancellation of award, resolicitation and second award of proposals for the same services. The release of the Composite Score sheet with MMO's knowledge that the solicitation was going to be re-advertised coupled with the MMO's release of CDR's proposal in effect created an unfair advantage for certain proposers and inequitable treatment of CDR in violation of South Carolina's Procurement Code and South Carolina's Procurement Regulation 19-445.2010 (c) because of its disclosure of source selection information during the solicitation process. This flawed solicitation process resulted in the radically different award results for the same parties, with the same credentials, experience and scope of services for each solicitation. As a result, CDR was granted an award for the first solicitation but it was not even in the top three (3) for the second Solicitation and was not awarded a contract.

The problems started with the 1<sup>st</sup> Solicitation and the delivery method for the proposals. On the cover page of the first Solicitation, the delivery method clearly stated that copies were to be provided in hard copy as well as electronically. In Amendment 1 to Solicitation 1, Attachment B Questions and Answers, #3, this requirement was confirmed, "If the Solicitation is submitted

electronically, do we still need to submit hard copies? Answer: Please refer to Cover Page- 'NUMBER OF COPIES TO BE SUBMITTED' section'. Clearly, the cover page of the 1<sup>st</sup> Solicitation indicates submittals are required in hard copy and digitally. In spite of this clear language and clarification in Amendment 1, it is believed that Adjusters International only submitted digitally and did not provide hard copies and thus its proposal was nonresponsive. The March 16, 2017 MMO Vendor Response Form confirms this in Line 9 "Adjusters International Online Only". By submitting only online, Adjusters International did not present an "[u]nequivocal offer to provide the exact same thing called for in the Invitation to Bid" and its proposal by definition was unresponsive. See 3 Government Contract Awards: See Negotiations and Sealed Bidding 27:16. Adjusters International's proposal, therefore, should not have been considered. On April 14, 2017, MMO issued the Intent to Award to CDR, Hagerty and MB3 correctly not taking Adjuster's International's proposal into consideration because it was nonresponsive. On April 26, 2017, however, MMO reversed this decision and cancelled the award because the "PM had not previously seen a proposal submitted by Adjusters International... Moreover, the PM determined that this proposal was responsive" stating it was administrative error not to evaluate and rank Adjuster's International's proposal. See SFAA April 25, 2017 Written Determination, pp.1-2.

After the April 14, 2017 Intent to Award was made, on April 17, 2017, the PO requested CDR provide a redacted Technical and Price Proposal to it for response to a FOIA request made by an unsuccessful proposer Tetra Tech. Tetra Tech requested "Bid Tabulation Sheet/Scoring Sheets (and evaluator notes if available) Pricing Information submitted by the proposers copy of winning proposals". Given that the award had been made, and wanting to be cooperative, CDR provided its redacted proposal via a link to drop box receipt of which was acknowledged on 4/19/17 by Vivian Alston at the MMO.

On April 26, 2017, after CDR provided its Redacted Proposal and the Intent to Award had been issued to CDR, Atkins and Hagerty, CDR received an email from the MMO stating that the award had been cancelled along with a list of attached documents. Included on the email were all the proposers who had submitted on Solicitation #1, Hagerty, Tetra Tech, Atkins, GP Strategies, Witt O'Brien, Adjusters International and J&M Global Solutions. The documents attached to the email were:

- Determination Cancelling Award
- Vendor Response Form
- Composite Score Sheet
- Email from Adjusters International
- Award Suspension

- Cancellation of Award Request
- Award Cancellation

After receiving the award cancellation, CDR filed its own FOIA request for copies of all proposal offers received to level the playing field. CDR's request was denied May 15, 2017 because "all response documents are incidental to a proposed contractual arrangement and therefore exempt from disclosure under FOIA".

On May 2, 2017 the MMO put out a 2<sup>nd</sup> solicitation for the same services. CDR submitted its proposal but failed to rank in the top three (3) and was not awarded the contract again.

The question is what changed between these two (2) solicitations for the same services? Why was CDR awarded a contract under the 1<sup>st</sup> Solicitation but not the 2<sup>nd</sup> Solicitation? First, because CDR provided its redacted proposal to Solicitation #1 after the first intent to award but before the cancellation of the award and 2<sup>nd</sup> Solicitation, its proposal was made public between the time of the two (2) Solicitations. At the time it provided its redacted proposal to MMO, CDR had been awarded the contract. Had it known that the award was going to be cancelled, it would not have provided this information. Ironically, the MMO refused to provide this same information to CDR after the cancellation notice was issued because it involved a "proposed contractual arrangement... exempt from FOIA". Given the cancellation of the award, Tetra Tech's FOIA request should have been denied for the same reasons. Having the ability to see and study another proposer's proposal prior to bid gave the other parties an unfair advantage. With CDR's now public proposal along with the documents attached to the cancellation email including the Composite Score Sheet to use to review how CDR and others were evaluated and ranked on their proposals, other proposers were able to edit or change their proposals using this information to their advantage for the 2<sup>nd</sup> Solicitation. This is inherently unfair and it is why South Carolina Procurement Regulations, specifically 19-445.2010 (C) prohibit the furnishing of this "source selection information" prior to the issuance of an award or intent to award. In pertinent part, the regulation states:

C. Prior to the issuance of an award or notification of an intent to award, whichever is earlier, state personnel involved in an acquisition shall not engage in conduct that knowingly furnishes source selection information to anyone other than the responsible procurement officer... "Source selection information "means any of the following information that is related to or involved in the evaluation of an offer (e.g. bid or proposal) to enter into a procurement contract. Under the regulation, source selection information includes: "(3) technical evaluation plans (4) technical evaluations of proposals... (6) information regarding which proposals are determined to be reasonably susceptible of being selected for award (7) rankings of responses, proposals or competitors (8) reports, evaluations of source selection committees or evaluations, (9) other

information... that in its disclosure would jeopardize the integrity or successful completion of the procurement to which the information relates.

Arguably, the release of the Composite Score sheet alone is a direct violation of this regulation. Knowing that this solicitation was going to be re-advertised, the release of the Composite score sheet created an enormously unfair advantage and jeopardized the integrity of the process as well as prejudiced CDR in the solicitation process. With CDR's 1<sup>st</sup> proposal out in public, and the information from the 1<sup>st</sup> solicitation as well as the Composite Score sheet with the evaluations and rankings to use to prepare and submit for the 2<sup>nd</sup> Solicitation, the basic tenant of section 11-35-20 of the Procurement Code to "(f) ensure the fair and equitable treatment of all persons who deal with the procurement system" has been violated. With this information before them, the proposers for the 2<sup>nd</sup> Solicitation had an unfair advantage in the process that resulted in a winning proposer for the 1<sup>st</sup> Solicitation, CDR, not winning an award for the 2<sup>nd</sup> Solicitation for the same services.

CDR respectfully states that, at a minimum, the June 20, 2017 Intent to Award should be cancelled and the solicitation should be rebid or that the award to CDR under the 1<sup>st</sup> Solicitation should be reinstated. Having been awarded the contract in an unbiased, equitable evaluation under the 1<sup>st</sup> solicitation it is clear CDR's proposal was responsive, it is a responsible proposer and it has the qualifications and experience and ability to meet the Solicitation requirements necessary to provide services and to be a successful proposer. In fact, it was a successful proposer awarded a contract. In addition, pursuant to S.C. Code Ann. Section 11-35-4310 (4), CDR requests the amount of reasonable expenses incurred to file this protest including reasonable attorneys fees.

Thank you for your consideration of this protest.

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GRANT GILLESPIE  
EXECUTIVE DIRECTOR

## Written Determination

**Posting Date:** April 25, 2017  
**Contracting Entity:** SFAA for SC Emergency Management Division  
**Project No.:** 5400012547  
**Description:** Emergency Recovery Support Personnel

### DIGEST

Under a solicitation calling for proposals to provide emergency recovery support personnel, request to cancel award is approved where a responsive proposal was timely received but not evaluated.

### AUTHORITY

The Chief Procurement Officer (CPO) conducted an administrative review pursuant to S.C. Code Ann. §§ 11-35-1520(7) and (10) and Regulation 19-445.2085. This determination is based on material in the procurement file and applicable law and precedents.

### DETERMINATION

On December 21, 2016, the Materials Management Office (MMO) solicited proposals on behalf of the Emergency Management Division for Emergency Recovery Support Personnel. By the deadline for receipt of proposals, MMO received nine proposals. [Exhibit A] However, MMO mistakenly overlooked one proposal. As a result, MMO performed a responsibility check on only eight of the proposals and submitted only those eight proposals to the evaluation panel for evaluation and scoring. [Exhibit B] After the evaluation panel scored these eight proposals, MMO and EMD conducted negotiations with the three highest ranked offerors. On April 18, 2017, MMO posted a Notice of Intent to Award to those three offerors. [Exhibit C]

On April 21, 2017, the MMO Procurement Manager (the PM) received a request from Adjusters International for a debriefing and copies of evaluation documents and proposals of other offerors. [Exhibit D] The PM had not previously seen a proposal submitted by Adjusters International.

Written Determination, page 2  
Solicitation No. 5400012547  
April 25, 2017

Therefore, the PM immediately confirmed that Adjusters International had in fact submitted a timely proposal that the evaluation panel had not evaluated. Moreover, the PM determined that this proposal was responsive. On April 24, 2017, the PM suspended the Intent to Award and submitted a request to the CPO for cancellation of the intended award due to administrative error. [Exhibits E & F]

S.C. Code Ann. §§ 11-35-1530 provides that all timely and responsive proposals “must be ranked from most advantageous to least advantageous.” Adjusters International’s proposal was submitted by the deadline for receipt of proposals and was responsive to the State’s requirements. Therefore, it was administrative error not to evaluate and rank Adjusters International’s proposal.

S.C. Code Ann. § 11-35-1520(7) authorizes the cancellation of awards or contracts after award but before performance in accordance with regulations promulgated by the Board. Regulation 19-445.2085(C) authorizes cancellation of an award prior to performance reading:


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:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies, services, information technology, or construction being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (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.

The authority to cancel awards and solicitations should be exercised carefully and sparingly. However, these provisions authorize the CPO to cancel an award of a contract before performance begins, when a compelling reason exists and one or more of the grounds listed in the Regulation are present. Cancellation is warranted where, as here, the award is a violation of the explicit language of state law. Moreover, the protest period has not expired and performance has not begun.

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Solicitation No. 5400012547  
April 25, 2017

For the foregoing reasons, MMO's Notice of Intent to Award contracts under Solicitation Number 5400012547, Emergency Recovery Support Personnel, is hereby cancelled.

  
\_\_\_\_\_  
John St. C. White  
Chief Procurement Officer  
For Construction

Columbia, South Carolina

**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).

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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**

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Name of Requestor \_\_\_\_\_ Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Business Phone \_\_\_\_\_

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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: \_\_\_\_\_

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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.**

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised November 2016)*

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.

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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."

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**South Carolina Procurement Review Panel  
Request for Filing Fee Waiver  
1205 Pendleton Street, Suite 473, Columbia, SC 29201**

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\_\_\_\_\_  
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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public of South Carolina

\_\_\_\_\_  
Requestor/Appellant

My Commission expires: \_\_\_\_\_

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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.**