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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

Protest Decision

Matter of: Cleaning Services of the Upstate, Inc.
Case No.: 2018-112
Posting Date: July 31, 2017
Contracting Entity: Clemson University
Solicitation No.: 88042993
Description: Custodial Services

DIGEST

Untimely protest is denied. Cleaning Services of the Upstate's (CSU) letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer¹ conducted an administrative review pursuant to S.C. Code Ann. §11-35-4210(4). This decision is based on the evidence and applicable law and precedents.

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

BACKGROUND

Clemson University processed this procurement to establish an annual contract for custodial services to maintain a safe, sanitary and aesthetically pleasing environment at Clemson and CI-ICAR to include labor, equipment and supplies.

<i>Event</i>	<i>Date</i>
Solicitation Issued	05/15/2017
Intent to Award Issued	07/11/2017
Protest Received	07/24/2017

ANALYSIS

This Request for Proposals was issued by Clemson University for Custodial Services on May 15, 2017. An Intent to Award was posted to GCA Education Services on July 11, 2017. CSU protested the award on July 24, 2017. The South Carolina Consolidated Procurement Code authorizes the Chief Procurement Officer to conduct an administrative review of the protest of any actual bidder, offeror, contractor, or subcontractor in accordance with Section 11-35-4210(1)(b) as follows:

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.

(emphasis added) In this case, the Intent to Award was posted on July 11, 2017. Protests must be received by the Chief Procurement Officer no later than the close of business on the tenth day or, in this case, July 21, 2017. CSU's protest was not received until July 24, 2017 and consequently the Chief Procurement Officer lacks jurisdiction to review CSU's issues of protest.

DECISION

For the reasons stated above, the protest of Cleaning Services of the Upstate, Inc. is dismissed as untimely.

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Case No. 2018-112

July 31, 2017

For the Information Technology Management Office

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

Michael B. Spicer

Chief Procurement Officer

Attachment 1

From: [Tim Gardner](#)
To: [Protest-MMO](#)
Cc: [Jan Gardner](#)
Subject: Protest to intent to award solicitation No. 88042993
Date: Monday, July 24, 2017 4:10:28 PM

This is a protest by Cleaning Services of the Upstate, Inc. in response to the intent to award Solicitation No. 88042993 to Cleveland, Ohio-based GCA Services, which was acquired by New York-based ABM on July 12, 2017 (“GCA/ABM”). Our protest is based upon the following:

1. The bid was changed this year to combine the CU-ICAR campus, which is located in Greenville, South Carolina, with the bid for the main campus of Clemson University, which is located in Pickens County. The campuses are at least forty miles apart. By combining the bids the bidding was made less competitive because it may have eliminated some bidders that might have considered doing one campus versus both campuses. Travel time between the campuses will require more people and equipment, thereby raising costs.
2. According to the “Disclosure of Conflicts of Interest or Unfair Competitive Advantage” section of the Clemson University Standard Bidding Terms and Conditions – Revision C, Effective September 1, 2015, we believe a conflict of interest exists in that an unfair competitive advantage was given to GCA/ABM in the preparation for this bid. It is my understanding that Mr. Chris Miller, the facility manager for GCA/ABM, had direct input in the writing of the bid, which, for the first time, included the CU-ICAR campus. It is unknown how much influence and input Mr. Miller may have had to combine all the facilities into one bid, thereby attempting to place smaller companies at a disadvantage.
3. Our bid was approximately \$857,000 per year lower than the GCA/ABM bid. This contract, being for a period of five years, would result in additional expense to Clemson University, and indirectly to the State of South Carolina, of over \$4,285,000.
4. Since much of the evaluation criteria is subjective, it was applied in a way that resulted in our company not being given credit for our service history to CU-ICAR for the past ten years. In applying subjective standards, much weight would have to be given to the fact that in the matter of cleaning maintenance, Cleaning Services of the Upstate has the longest sustainable history with Clemson University and has fulfilled its contract during the ten years that it has been doing the cleaning of the CU-ICAR campus. We believe that this should result in the award of thirty points for experience and a minimum of at least seven points for sustainability.
5. We object to an award effectively being given to a company that was not in the bidding process. Since ABM was not in the bidding process, none of the criteria upon which the companies are judged was applied to the company that is being effectively awarded the contract.
6. We believe that the bid was designed to disadvantage smaller, local companies in favor of larger companies. As noted above, instead of resulting in a greater efficiency that would be reflected in a lower bid price, it results in a more expensive bid of more than \$4 million over the five-year period.
7. While not stated as a part of the bid process, we believe that it is an important factor and

consideration that local companies should be given more consideration. Dealing with local companies means that money and jobs stay within the State, instead of much of the money flowing out of the State supporting administrative and multi-level management of larger companies located in other states. Also, as has been our history over the past ten years of serving the CU-ICAR campus, there is direct involvement of the principals of the company in the oversight of the services being performed and any communication desired between Clemson University and the person overseeing the cleaning services. We have the opportunity to provide greater focus, and attention, to the services being rendered than larger, multi-level companies that would only have lower-level management on site.

For these reasons, we believe the awarding of the contract of Solicitation No. 88042993 should be reviewed and be changed to award the contract to Cleaning Services of the Upstate as the low bidder with a long-term, proven record in providing services to Clemson University at its CU-ICAR facility. An alternative would be to continue to separate the two campus locations and obtain new bids, one for each campus.

Thank you for your consideration to this protest. If there are any questions, or if you desire additional information from our Company or to discuss the matters raised in this protest, we will make ourselves immediately available.

CLEANING SERVICES OF THE UPSTATE, INC.

By Timothy Gardner, President

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW
Protest Appeal Notice (Revised September 2015)

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 111.1 of the 2015 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 209, 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.