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(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 Assa Abloy/CNC Door Company

**Case No.:** 2018-116

**Posting Date:** September 19, 2017

**Contracting Entity:** South Carolina Department of Transportation

**Solicitation No.:** 5400013913

**Description:** Rolling Steel Service Doors and Installation

This matter is before the Chief Procurement Officer for Information Technology<sup>1</sup> (CPO) pursuant to a request from the South Carolina Department of Transportation (DOT) [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 Assa Abloy/CNC Door Company (Assa) to install rolling steel service doors on DOT Salt Sheds located in Lancaster and Chester, SC 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

DOT issued solicitation 5400012855 on August 8, 2017 for the installation of rolling steel service doors on two DOT salt sheds. DOT received bids and determined Assa the responsible

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

bidder offering the lowest responsive bid. DOT posted an award to Assa on August 31, 2017. [Ex 2] On September 7, 2017, DOT received an email from the South Carolina Department of Labor, Licensing, and Regulation indicating that the solicited work required a licensed contractor and that Assa was not a licensed contractor in South Carolina. [Ex. 3]

Section 11-35-15502)(b) requires:

... The award must be made to the lowest responsive and responsible sources.

A responsible bidder is defined in Section 11-35-1410(6) as:

"Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.

Since Assa does not have the required license, it does not have the capability in all respects to perform the contract and is not a responsible bidder. Consequently, DOT requests cancellation of the award prior to performance in accordance with Regulation 19-445.2085(C)

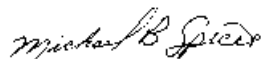
After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled and either re-awarded or a new solicitation issued or the existing solicitation canceled, if the Chief Procurement Officer determines in writing 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 Assa Abloy/CNC Door Company is cancelled under Regulation 19-445.2085(C).



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Michael B. Spicer  
Chief Procurement Officer

## Exhibit 1

**From:** [Tyler, Deborah L.](#)  
**To:** [Spicer, Michael](#)  
**Cc:** [Conner, Ron L](#)  
**Subject:** Request to Cancel Award  
**Date:** Thursday, September 14, 2017 12:26:44 PM  
**Attachments:** [image004.png](#)  
[Solicitation.pdf](#)  
[LLR Email.pdf](#)

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Mr. Spicer,

RE: Solicitation 5400013913

On August 31, 2017 I issued an award to Assa Abloy/CNC Door Company for the furnishing and installation of Rolling Steel Service Doors for two of SCDOT's Salt Sheds. It has been brought to my attention by LLR that the installation can only be performed by a South Carolina Licensed Contractor, pursuant to **SECTION 40-11-30 of SC Code of Laws**, which states "No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter".

For this purpose, SCDOT is requesting permission to cancel the award made to Assa Abloy/CNC Door Company, as stated in 19-445-2085 C (7) of the SC Procurement Regulations and award to the next lowest Responsive and Responsible bidder. I will issue a determination of nonresponsibility to Assa Abloy/CNC Door Company.

Thank You,

Deborah L. Tyler  
Procurement Manager  
Procurement Services  
SC Department of Transportation  
803-737-1530 O | 803-737-2046 F  
[TylerdL@scdot.org](mailto:TylerdL@scdot.org)

955 Park Street – Room 101  
Columbia, SC 29201



*Celebrating 100 years of service to South Carolina!*

**Exhibit 2**

STATE OF SOUTH CAROLINA  
SCDOT PROCUREMENT OFFICE  
955 PARK STREET ROOM 101  
COLUMBIA SC 29201-3959

**Statement of Award**

Posting Date: August 31, 2017

**Solicitation:** 5400013913  
**Description:** ROLLING STEEL SERVICE DOORS  
**Agency:** SC Department of Transportation

The State awards the contract noted below. This document is the final Statement of Award, effective **8:00 AM on September 1, 2017**. 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.

CERTIFICATES OF INSURANCE COVERAGE TO BE FURNISHED PRIOR TO COMMENCEMENT OF SERVICES UNDER CONTRACT.

**Contract Number:** 4400016998  
**Awarded To:** ASSA ABLOY/CNC DOOR COMPANY (7000100625)  
6600 WEST WT HARRIS BOULEVARD  
CHARLOTTE NC 28269

**Total Potential Value:** \$ 18,898.00  
**Maximum Contract Period:** September 01, 2017 through January 31, 2018

<b>Item</b>	<b>Description</b>	<b>Total</b>
00001	Rolling Steel Service Door	\$ 9,449.00
00002	Installation of Rolling Steel Service Door-Chester	\$ 0.00
00003	Rolling Steel Service Door	\$ 9,449.00
00004	Installation of Rolling Steel Service Door-Lancaster	\$ 0.00

Deborah L. Tyler  
**Procurement Officer**

## Exhibit 3

**Tyler, Deborah L.**

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**From:** Rhonda Jackson <rhonda.jackson@llr.sc.gov>  
**Sent:** Thursday, September 07, 2017 1:35 PM  
**To:** Tyler, Deborah L.  
**Cc:** wdavis43@sc.rr.com  
**Subject:** FW: SC Award: ROLLING STEEL SERVICE DOORS

**Importance:** High

\*\*\* This is an EXTERNAL email. Please do not click on a link or open any attachments unless you are confident it is from a trusted source. \*\*\*

Ms. Tyler,

After a review of the work that is being done on this project, only S.C. licensed contractors can bid and be awarded this job. There is nothing in the statutes or regulations governing regulated work in S.C. that exempts businesses from conforming to the laws through means of "good and services". Therefore, the installation of these doors must be awarded to a licensed contractor. I did not find "CNC Door Company" or "ASSA ABLOY Group" licensed with our board to bid or be awarded regulated work.

Please keep in mind that the exemption in our statutes, 40-11-360(A)(4), is related to highway-related work only, since that is the type of work SCDOT prequalifies contractors for:

**SECTION 40-11-360. Exemptions from application of chapter**

(A) This chapter does not apply to:

(4) Contractors performing construction work for the South Carolina Department of Transportation pursuant to that department's prequalification requirements with the exception of public/private partnerships performing work pursuant to Section 57-3-200.

**SECTION 57-3-200.** Department of Transportation authorized to enter into agreements to finance construction and maintenance of highways, roads, streets, and bridges.

All other forms of regulated work is not included in this exemption and would therefore require licensing.

If you have any additional questions or concerns, do not hesitate to contact me.

*Rhonda C. Jackson*

Program Coordinator



Please click here: [\\*\\*Customer Service Survey\\*\\*](#) to take a quick 30-second survey regarding the service I provided to you today. It is greatly appreciated! 😊

[SC Contractor's Licensing Board](#)

110 Centerview Drive, Columbia, SC 29210

PO Box 11329, Columbia SC 29211

PH: (803) 896-4627, FAX: (803) 896-4814

[Licensee Lookup](#) (Board: Contractors-Commercial)

[General Licensing Information and Instructions](#)

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Written Determinations Appeal Notice (Revised July 2017)*

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 367, 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.**