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THE DIVISION OF PROCUREMENT SERVICES

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## Protest Decision

**Matter of:** CMB Services, Inc.

**Case No.:** 2018-120

**Posting Date:** November 1, 2017

**Contracting Entity:** University of South Carolina

**Solicitation No.:** USC-IFB-3085-MR-Re-Bid

**Description:** University of South Carolina Law School Custodial Services

### DIGEST

Protest of cancellation of solicitation is granted. CMB Services' (CMB) 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 materials in the procurement file 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 Issued	08/08/2017
Amendment 1 Issued	08/09/2017
Amendment 2 Issued	08/21/2017
Amendment 3 Issued	08/22/2017
Amendment 4 Issued	08/23/2017
Solicitation Cancelled	10/06/2017
Protest Received	10/13/2017

## ANALYSIS

The University of South Carolina (USC) conducted this Reverse Auction (RA) on August 8, 2017, pursuant to S.C. Code 11-35-1529, seeking custodial services for the University of South Carolina Law School. After the RA concluded, CMB was the apparent low bidder. USC issued a written determination on August 23, 2017, cancelling the solicitation and indicating that it would perform the services in-house instead of awarding a contract. [Attachment 2] In its written determination, USC erroneously relied on Regulation 19-445.2085(C) as its authority to cancel the solicitation. Regulation 19-445.2085(C) is titled Cancellation Of Award Prior To Performance. There is no award; consequently this Regulation is not applicable.<sup>2</sup>

However, as recognized in CMB's letter of protest, Regulation 19-445.2065(B) does provide for the Cancellation of Bids Prior to Award as follows:

- (1) When it is determined prior to the issuance of an award or notification of intent to award, whichever is earlier, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with subsection A above and the procurement officer determines in writing that....

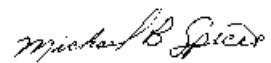
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<sup>2</sup> Regulation 19-445.2085(C) also requires the written determination be made by the Chief Procurement Officer.

**DECISION**

For the reasons stated above, USC's written determination is invalid. Accordingly, the CPO grants the protest of CMB Services, Inc., vacates the determination, and remands the procurement to USC for processing in accordance with the South Carolina Consolidated Procurement Code and Regulations.

For the Materials Management Office



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Michael B. Spicer  
Chief Procurement Officer

## Attachment 1

**CMB Services, Inc.**  
*1225 Laurel St., Suite 409, Columbia, S.C. 29201*  
*Telephone: (803) 807-0117 Email: april.cmbervicesinc@gmail.com*

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October 13, 2017

University of South Carolina  
Chief Procurement Officer  
Materials Management Office  
1201 Main St., Suite 600  
Columbia, SC 29201

RE: PROTEST of Solicitation No. USC-IFB-3085-MR-Re-Bid

We are hereby protesting the subject Solicitation Cancellation for the following reasons:

On Tuesday, October 3, 2017 we participated in a reverse auction for the above referenced solicitation. The results of the reverse auction were CMB Services, Inc. being the lowest responsive bidder, (please see attachment).

On Friday, October 6, 2017 we received an email informing us that the University of South Carolina would be performing the custodial services, therefore, they are cancelling the solicitation. The letter in said email referenced the South Carolina Regulations Chapter 19, Regulation 19-445.2085 Correction or Withdrawal of Bids; Cancellation of Awards.

The Regulation states the following:

**19-445.2085. Correction or Withdrawal of Bids; Cancellation of Awards.**

**A. General Procedure.**

A bidder or offeror must submit in writing a request to either correct or withdraw a bid to either the Chief Procurement Officer or the procurement officer of the governmental body. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss.

**B. Correction Creates Low Bid.**

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake in the judgment of the procurement officer is clearly evident from examining the bid document; for example, extension of unit prices or errors in addition.

**C. Notice of Award.**

Cancellation of award prior to performance. When it is determined after an award has been issued but before performance has begun that the State's requirements for the goods or services have changed or have not been met, the award or contract may be canceled and either re-awarded or a new solicitation issued, 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 or services 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 procuring agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.

Prior to this bid, the initial reverse auction was re-bid due to the offeror who was the lowest, responsive bidder not being able to perform service at bid offer price.

We would also like the record to reflect the South Carolina Regulations Chapter 19, Regulation 19-445.2065 which states:

**19-445.2065. Rejection of Bids.**

**A. Application.**

Unless there is a compelling reason to reject one or more bids, award will be made to the lowest responsible and responsive bidder. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule after opening, an invitation for bids should not be canceled and re-advertised due solely to increased quantities of the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.

**B. Cancellation of Bids Prior to Award.**

When it is determined prior to an award, but after opening, that the requirements relating to the availability and identification of specifications have not been met, the invitation for bids shall be cancelled. Invitations for bids may be cancelled after opening, but prior to award, when such action is consistent with Subsection A above and the procurement officer determines in writing that:

- (1) inadequate or ambiguous specifications were cited in the invitation;
- (2) specifications have been revised;
- (3) the supplies or services 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) all otherwise acceptable bids received are at unreasonable prices;
- (7) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
- (8) for other reasons, cancellation is clearly in the best interest of the State.

Determinations to cancel invitations for bids shall state the reasons therefor.

**C. Extension of Bid Acceptance Period.**

Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for re-advertisement.

As well as the South Carolina Regulations Chapter 19, Regulation 19-445.2090 which states:

**19-445.2090. Award.**

**A. Application.**

The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

**B. Time of Award.**

The procurement officer shall issue the notice of intent to award or award on the date announced at the bid opening, unless the procurement officer determines, and gives notice, that a longer review time is necessary. The procurement officer shall give notice of a time extension to each bidder by posting it at the location announced at the bid opening.

**C. Notice of Award.**

Written notice of award shall be sent to the successful bidder in procurements over \$25,000.00. Notice of award shall be made available to the public on request and shall be posted at the location announced at the bid opening.

As a result of the above-mentioned regulations, CMB Services, Inc. respectfully request that the solicitation be awarded to CMB Services, Inc. as the lowest responsive bidder.

Sincerely,



April Stuart  
Sales Manager

State of South Carolina County of Richland

On this 13<sup>th</sup> day of October, 2017, before me personally appeared April Stuart, who provided satisfactory evidence of her identification to be the person whose name is subscribed to this instrument and she acknowledged that she executed the foregoing instrument by her signature here.

  
\_\_\_\_\_  
Document Holder's Signature

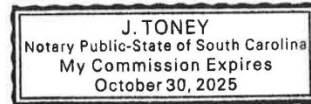
Sworn to (or affirmed) and subscribed before me this the 13<sup>th</sup> day of October, 20 17.

  
\_\_\_\_\_  
Official Signature of Notary

(Official Seal)

J. Toney, Notary Public  
Lexington County, South Carolina

My commission expires: 10-30-25





**Upcoming Events**

| **Past Events**

| **Archived Bids**

| **Help**

| **Logout**

University of South Carolina - REOPEN Law School Custodial Services - Logged in as APRIL WYMAN

Current Eastern Daylight Time 02:00 PM

**Bid Ended**

**Tuesday, October 03, 2017 3:02:35 PM**

*Eastern Daylight Time*

**Time Remaining**  
**00:00:00:00**

*Ended*

**Lots and Elements**

**Custodial Services for USC Law School**

[SHOW / HIDE](#)

Description	Rank	Current Bid	Total	New Bid	Bid Info	History
Provide Custodial Services for USC Law School per Specifications - All Inclusive ANNUAL Price Min Dec: \$500.00 Floor: \$0.01 Type: Required Number Entry	1	\$338,500.00	\$338,500.00	\$ <b>338,500.00</b>		

Google Analytics

Toll Free: 1-877-245-8880



Attachment 2



October 6, 2017

**CANCELLATION OF SOLICITATION**

**REFERENCED SOLICITATION NUMBER: USC-IFB-3085-MR (Re-Bid)**

**TO: Provide Custodial Services for the  
University of South Carolina Law School**

**ISSUE DATE: August 8, 2017**

**DEADLINE FOR RESPONSES: August 23, 2017**

The above referenced solicitation is cancelled in its entirety. This cancellation is based upon South Carolina Regulations Chapter 19, Regulation 19-445.2085. Correction or Withdrawal of Bids; Cancellation of Awards. (C) Cancellation of Award Prior to Performance for the following reason:

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

The University has decided to perform the services in-house instead.

Michelle Robinson

Michelle Robinson, CPPB  
Procurement Manager

**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**

*Protest Appeal Notice (Revised July 2017)*

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."

**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.**