

HENRY MCMASTER, CHAIR
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

GRANT GILLESPIE
EXECUTIVE DIRECTOR

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: Hutch-N-Son Construction, Inc.

Case No.: 2019-104

Posting Date: August 29, 2018

Contracting Entity: Clemson University

Solicitation No.: 105105760-1

Description: Mulch Contract

DIGEST

Protest is denied as untimely. Hutch-N-Son Construction's letter of protest is included by reference. [Attachment 1]

AUTHORITY

The Chief Procurement Officer (CPO)¹ 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.

BACKGROUND

Event	Date
Solicitation Issued	07/27/2018
Intent to Award Issued	08/07/2018
Protest Received	08/20/2018

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

ANALYSIS

Clemson issued solicitation 105105760 to establish a contract for mulch on July 9, 2018. On July 27, 2018, Clemson canceled the solicitation due to changes in the Scope of the solicitation. [Attachment 2] Clemson issued a revised solicitation later that day. The new solicitation was advertised in the South Carolina Business Opportunities (SCBO) publication on July 27, 2018. Clemson opened bids on August 7th, and posted an Intent to Award to Bark Plus, Inc. on August 7, 2018. Hutch-N-Son filed its protest on August 20, 2018.

The South Carolina Consolidated Procurement Code authorizes the CPO 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:

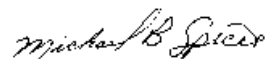
Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest to the appropriate chief procurement officer in the manner stated in subsection (2)(b) within ten days of the date award or notification of intent to award, 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.

This section requires protests to be filed within ten days of the date of the award or the intent to award. Hutch-N-Son submitted its protest thirteen days after Clemson posted the award statement, three days after the jurisdictional time limitations.

DECISION

For the foregoing reasons the protest of Hutch-N-Son, Inc. is denied.

For the Materials Management Office



Michael B. Spicer
Chief Procurement Officer

Attachment 1

Hutch-N-Son Construction, Inc.

P.O. Box 1874
Seneca, SC 29679
Phone: (864) 885-1688
Fax: (864)885-1655

August 20, 2018

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600 Columbia
SC 29201 Facsimile: 803-737-0639

protest-mmo@mmo.state.sc.us

To whom it concerns:

I would like to protest Solicitation # 105105760-1.

I bid on Solicitation 105105760 Addendum 3 on August 25. I received a notification on August 27, 2018 which stated the following:

“Dear Supplier,

A decision has been made to No Award the following opportunity:

Decision Notes: In accordance with Section 11-35-1710 of the S.C. Consolidated Procurement Code, Clemson University is cancelling SB #105105760 Mulch Contract due to several changes being made to the Scope of Work. The solicitation may be rebid at a later date. Please note the rebid number will be SB #105105760-1 Mulch Contract.”

In the email it states “it may be rebid at a later date”.

I just recently found out the bid was put back out the date of the “No Award” notice.

I feel that we were not properly notified that it was being rebid the dated they announced a No Award.

Truly,

Danny Hutchinson
President

Grading Hauling Public Utilities



July 27, 2018

CANCELLATION NOTICE

FROM: Beth Perry, Procurement Specialist II
Procurement & Business Services

SUBJECT: Cancellation Notice for Bid #105105760

SECTION 11-35-1710 Cancellation of invitation for bids or request for proposal.

Any solicitation under this code may be cancelled, or any or all bids or proposals may be rejected in whole or part as may be specified in the solicitation, when it is in the best interest of the State. The reasons for rejection, supported with documentation sufficient to satisfy external audit, shall be made a part of the contract file.

In accordance with Section 11-35-1710 of the S.C. Consolidated Procurement Code, Clemson University is cancelling SB #105105760 Mulch Contract due to several changes being made to the Scope of Work. The solicitation may be rebid at a later date.

We are sorry for any inconvenience this may have caused you and/or your company. If you have any questions, I can be reached at (864) 656-3249.

Procurement and
Business Services

Clemson University
ASB 108 Perimeter Road
Clemson SC
29634-5365

P 864-656-2390
F 864-656-2394

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

Protest Appeal Notice (Revised June 2018)

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 2018 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**

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.